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ENERGY AND WATER DEVELOPMENT
APPROPRIATIONS FOR 2001

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS
SECOND SESSION

SUBCOMMITTEE ON ENERGY AND WATER DEVELOPMENT

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PART 1

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS

OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
(CIVIL WORKS) AND CHIEF OF ENGINEERS

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(ii)

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS FOR 2001

Tuesday, March 28, 2000.

DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS

WITNESSES

DR. JOSEPH. W. WESTPHAL, ASSISTANT SECRETARY OF THE ARMY
LTG JOE N. BALLARD, CHIEF, CORPS OF ENGINEERS
MG HANS A VAN WINKLE, DEPUTY COMMANDING GENERAL FOR CIVIL WORKS
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BG PETER T. MADSEN, SOUTH PACIFIC DIVISION
COL SEAN M. WACHUTKA, GREAT LAKES AND OHIO RIVER DIVISION

INTRODUCTION

Mr. Packard. Good morning ladies and gentlemen, we appreciate your attendance at this hearing. We will call the hearing to order. This morning we are extremely pleased to welcome Dr. Joseph Westphal, the Assistant Secretary of the Army for Civil Works; also, Lieutenant General Joseph Ballard, we are very delighted to have you back with us again. In fact, I believe, General, that this will be your last official approach to the Committee. We congratulate you on a very distinguished career.

We are also pleased to have with us Major General Hans Van Winkle, we appreciate you being here, General. General Van Winkle is the Deputy Commander for Civil Works. They will be testifying, at least Secretary Westphal and General Ballard will be testifying and, of course, you will be welcome to make any comments you would like, General Van Winkle.

We are also grateful to have with us the Division Commanders. This is the time for them to be here, and we welcome back Mr. Caver, we are glad to have you with us.

Thus far, the Year 2000 has been a rather interesting and exciting year for the U.S. Army Corps of Engineers and probably more exciting than you would like to see it. [Laughter.]

For a while, it seemed like that we could count on there being a story about the Corps in the newspapers almost every day. And, unfortunately for you, they weren't very flattering, to say the least. We may have some questions on that as we proceed through the hearing process today. We think that some of those are rather serious accusations and we ought to at least give you an opportunity to respond to them and we will see how that proceeds.

I would like to state, for the record, that I believe that we should all wait for the facts before any real judgment is made relative to what has come out in the newspapers.

We will place all of your written testimonies, including the Division Commanders' written testimony in the record and they will be made an official part of the record. I have read virtually all--it took up most of my weekend to read your testimonies--all of them, but it was very good, they were very well done and I appreciate them.

If anyone else has any opening statements, we will give you an opportunity if you have a desire to make any opening statement. If not, then let us proceed.

We have received both the oral and written full testimony of both you, Dr. Westphal, and General Ballard and also General Van Winkle. Your written and full statement will be entered into the record and we would be very pleased to have your oral testimony and we will proceed on that basis.

If we have covered everything then let us proceed in this order. We will hear from Dr. Westphal first, and then General Ballard and then anyone else that may have some oral statements that they would like to make and then we will open it up to questions and answers.

Dr. Westphal?

TESTIMONY OF DR. WESTPHAL

Dr. Westphal. Thank you, Mr. Chairman, Congressman Visclosky, distinguished members of the Committee, I am delighted to be here. I also join with you in congratulating General Ballard on a very distinguished military career, his service to the nation and the great job that he has done in his tenure as Chief of Engineers. I know that I am going to miss him in this job and I hope that his retirement is a fulfilled one.

I am also saddened by the event of your departure from the Congress. You bring not only a great record but tremendous respect from both sides of the aisle and I speak, I think, for the Administration in saying that we are saddened to see you leave Congress and certainly the Chairmanship of this Subcommittee. But I hope that you also will have the great opportunity to enjoy your grandchildren and play some golf and enjoy that Southern California weather.

Mr. Packard. Should be a good life. [Laughter.]

Dr. Westphal. Mr. Chairman, back in 1824, when Congress passed the Rivers and Harbors Act, Congress made an appropriation, its first appropriation to the Army Corps of Engineers, in the sum of about \$75,000 for the purpose of the ``removal of snags and saywers and planters and other impediments of that nature,`` from the Ohio and Mississippi Rivers. This year the President's budget request for the fiscal year 2001 totals \$4.063 billion. It is \$163 million above the President's budget proposal for last year. And we expect that the non-Federal contributions and other sources to be approximately \$395 million in fiscal year 2001 and bring that total to about \$4.5 billion.

So, from that initial \$75,000 appropriation in 1824, our investment in water and related land resources is estimated to be worth \$124 billion today. From that initial job of clearing snags on the Ohio River, the Army Corps of Engineers now works to serve the nation's needs in such areas as toxic and hazardous waste cleanup, recreation, disaster relief, shoreline protection, hydropower generation, flood protection, environmental restoration and other missions.

This year, the President is requesting your support in funding three important initiatives that will greatly help our ability to integrate planning priorities, help us to address an important backlog of maintenance of our infrastructure and protect lives, save money and improve the environment through a nonstructural flood damage reduction program.

First, with this budget, we are proposing to undertake four comprehensive watershed studies. In 1997, my predecessor, Martin Lancaster, made a presentation to the World Water Forum. He stated that: ``As we approach the 21st century, the need for new modes of interstate cooperation grows, in both humid and arid areas. Reliance on court judgments has proved too expensive, inflexible, time consuming and precedent-bound to meet our needs realistically.'' I think he was right.

Strengthening our ability to work with our Federal, State and Tribal partners early in the process is critical. I believe our proposal can serve as a model for future planning efforts that yield positive results and quicker and more effective solutions to problems that will enable us to design and build good projects in the future.

Congresses and Presidents have greatly expanded the ability of the Army Corps of Engineers to meet both engineering demands as well as the environmental goals of society. Adding economics to the mix, we now must use an integrated approach to balancing all three priorities.

Our population continues to increase, we continue to be vulnerable to droughts as well as many other effects of unacceptable water as a result of stormwater drainage, combined sewer overflows, nonpoint source pollution and lack of modern water delivery and sanitation infrastructure.

We also have the needs of agriculture, flood control, industrial uses of water and water supply to urban areas. These complex, basin-wide issues can only be solved through processes that integrate the efforts of local stakeholders and State and Federal agencies.

Our strategy is simple. We have selected four major watersheds that face many of the problems listed above. The four pilot projects will undertake a comprehensive study of the water resources needs of the basin. We will identify Federal, Tribal and State and local partners to share costs and we will focus on solving problems.

The four pilot projects are: The Rio Grande, the Lower Missouri-Middle Mississippi River basin, the White River in Arkansas and the Yellowstone River in Montana.

The second initiative is aimed at reducing our significant backlog of maintenance on our recreation areas. The Army Corps of Engineers is responsible for 4,340 recreation areas at 456 lakes in 42 States. These recreation areas host 377 million visitors annually.

We are requesting \$27 million in fiscal year 2001 to initiate a recreation modernization program which will replace or rehabilitate facilities at some of the more than 2,389 recreation areas that the Army Corps of Engineers manages directly. Many of these facilities were constructed in the 1960s and 1970s and the combination of heavy use, lack of routine maintenance, and changes in visitor needs has caused significant deterioration of recreation facilities and the natural resource base at some of these lakes.

We hope to modernize about one-quarter of the Corps-managed recreation areas over the next 5-to-10 years. These improvements will include upgrading facilities, installing more family-oriented facilities, and improving general access to water recreation-related opportunities.

The third initiative is our Challenge 21 program, better known as the Riverine Ecosystem Restoration and Flood Hazard Mitigation Program. The fiscal year 2001 budget includes \$20 million to initiate Challenge 21, authorized in WRDA 1999. This initiative expands the use of nonstructural flood hazard mitigation options and restoration of riverine systems to allow more natural recession of floodwaters and provide other benefits to communities and the environment. Challenge 21 will create partnerships with communities and establish a framework for more effective coordination with key agencies.

The fiscal year 2001 budget for the Army Civil Works program includes \$82 million to initiate new investments with a total cost of \$1.6 billion. Of that total, \$410 million will be financed directly by non-Federal sponsors, including lands, easements, rights-of-way, and relocations. In addition to the four comprehensive studies and three new programs that I noted earlier, the fiscal year 2001 budget will include four new surveys, one special study, one new preconstruction engineering and design project, and 12 new construction starts.

The Administration is committed to the traditional missions of improving our navigation and transportation system, protection of our local communities from floods and other disasters, and maintaining and improving hydropower facilities across the country.

Together with these important national priorities, the Army Corps of Engineers is also the nation's premier environmental restoration agency. This budget provides for the continued development and management of the nation's water resources infrastructure and the continuation of our work to enhance, protect and restore the environment.

With that, Mr. Chairman, I conclude my oral presentation.

[The prepared statement of Dr. Westphal follows:]

TESTIMONY OF LTG BALLARD

Mr. Packard. Thank you, Mr. Secretary.

General Ballard.

General Ballard. Mr. Chairman, Mr. Visclosky, members of the Subcommittee, I am honored to testify once more on the President's budget for the Civil Works Program.

As you noted, this is my last appearance before you as the Chief of Engineers. I would like to offer my congratulations to you, also. You have been a tremendous friend of the Corps and a great servant to this nation. I want to wish you the very best of luck as you transition.

I take great pride in the work that the two of us and this Committee has done over the last three years to ensure that the Civil Works Program remains strong and highly productive. But until my watch is over in just a few months, I will continue to work with you to that end, and I look forward to your continued partnership in this great program.

My complete statement covers three topics. The summary of the Civil Works Program's budget, which Dr. Westphal has just taken you through; reducing the Corps' maintenance backlog; and meeting the nation's water resources management needs. And with

your permission, I will submit that statement for the record as you have so noted.

I would like to talk to you today about some significant national challenges in water resource management and I will also address the recent media coverage on the Corps' work. As you know, my Regional Divisional Commanders are here with me today and they are available to answer any of your questions.

First, a few words about the challenge of meeting the nation's water resource management needs. The national needs and priorities must be continually reevaluated to ensure that we provide the best possible service to the nation, and we have identified five areas where the nation faces significant water resource challenges and these are in the areas of navigation, flood protection, environmental management, infrastructure renovation, and disaster response assistance.

We must meet these challenges in order to preserve and promote our future national welfare. And to that end, we need to increase our investment in water resource management, we need to invest in improving our water resource infrastructure, many parts of which have outlasted their design lives at a time when the usage is growing.

We need to meet new challenges for water resource investments, brought about by increasing trade, population, population shifts, and environmental values. And we need to invest, in addition to our water resources infrastructure, to the extent that improving existing infrastructure will not meet national needs.

Now, to address some recent media coverage of the Corps and, as you noted, it has not been very favorable. Allegations that I am trying to grow the Corps with respect to the number of employees is ridiculous, at best. Over the past four years, we have reduced the size of the organization by nearly 10 percent, while streamlining and improving our business processes. Let me say that the nation's workload for our mission is growing, but we are not. There are allegations of wrongdoing in the Upper Mississippi and the Illinois River Navigation Studies and they are very troubling to me. They attempt to challenge the fundamental value of the Army Corps of Engineers to the nation and the foundation of that value is trust in our absolute integrity to provide water resources investment recommendations that are unbiased and technically sound.

And I am certain, beyond a doubt, that your trust in this agency has not been misplaced. And I will say to this Committee that we welcome all independent investigations of the allegations. I will take prompt corrective action if wrongdoing is discovered and will make improvements in our processes if warranted.

However, when all the facts are in, the integrity of the Corps will be intact and you will know that the trust that you have placed in the Corps is well-founded. I can tell you that I firmly believe in the professionalism and the dedication of the Corps team and I have great trust in my leaders.

Our planning process provides for multiple reviews to assure objectivity. And these include technical reviews, formal public reviews, headquarter policy reviews, State and agency coordination requirements, and final review by the Executive

Branch and I place in front of you a chart that shows this complete process.

And for this study in question, the draft report has not even been completed, much less undergone the process that we talked about. And here is the slide that I was talking about over on that chart to your right. It is important to remember that there are no easy, clear-cut answers to the complex issues that we face in water resource management. I can tell you that technical experts honestly disagree on specifics, and in our business invariably there is an interest group that is opposed to some aspect of our work. That is just the nature of our business.

Our job is to balance sometime conflicting public interests with the needs of the nation. The bottom line is that the Corps planning process delivers recommendations, addressing the national interests based on sound engineering judgment.

Now, let me just bring you up to speed very quickly on where we are on the status of activities relating to the particular study in question. Our headquarters completed its policy review on some of the study team's draft products and we found that the District conducted the study in accordance with the Corps regulations on implementing the principles and guidelines. Nevertheless, information and some explanations are required. The complete findings were provided to the Division for further action. And this, by the way, is a normal step in our process for a study of this size and complexity. We are talking about a 10-year study looking out to the year 2050, not an exact process.

There are several external investigations and reviews in progress, including work being done by the Army Inspector General, the survey and investigation staff of the House Committee on Appropriations; the Secretary of the Army has also directed that an independent assessment be made on the economics of the study. The National Academy of Sciences will perform this review.

I am confident that the findings of these investigations will confirm that our planning process and execution of that process is fundamentally sound.

Now, let me conclude. We need to invest in water resource management infrastructure to meet the challenges based on national needs. And through deliberate streamlining and improvement of our business processes and downsizing of our work force, we continue to maximize the actual and potential value of our organization to the Civil Works Program, to the Army, and to the nation.

And, finally, we are pursuing our mission with the utmost professionalism and integrity. And I am confident that our planning process and the judgment of our leaders are sound and yield balanced recommendations for wise water resource investment.

Mr. Chairman, I want to thank you again, and members of the Committee, and this concludes my statement.

[The prepared statement of General Ballard follows:]

OTHER WITNESSES

Mr. Packard. Thank you very much, General Ballard.
General Van Winkle, did you have a statement you would like to make?

General Van Winkle. No, I don't.

Mr. Packard. Mr. Caver?

Mr. Caver. No, thank you.

[The prepared statement of General Van Winkle follows:]

Mr. Packard. Thank you very much.

I think it is noteworthy that we have such an excellent attendance at our hearing today by members of the Subcommittee. I will be here for the entire hearing, but several of the members of this Subcommittee have several other hearings going on right now so that many of them will be in and out. In deference to them I am going to withhold my questions because I will be here to ask them later.

I will turn to Mr. Visclosky for any questions he may have.

Mr. Visclosky. Mr. Chairman, I am here for the duration as well so if other members have to go, I am fine for a while.

Mr. Packard. That is fine. We will go to Mr. Rogers.

Mr. Rogers. I thank the Chairman and the Ranking Member for the courtesy. We appreciate that very much.

It is good to see the Secretary and Generals and staff for this annual visit. We all on this Subcommittee have our general interest, of course, in the Corps and the issues that you are having to wrestle with, including the recent allegations, General Ballard, and perhaps we will have some questions on that as we go along here, but we also have our parochial interests that I know shocks you, but----[Laughter.]

PRIDE

Mr. Rogers. And Secretary Westphal has been with me several times now in my district in Eastern Kentucky as we toured and looked at flood control projects and also at a thing of which I am very proud and that is the Pride organization. That stands for Personal Responsibility In a Desirable Environment. General Van Winkle has been with us as well. And it is a truly amazing project. There are literally tens of thousands of kids, civic club members, church groups, picking up hundreds of tons of trash. Tens of thousands of appliances that were dumped over hillsides into creeks have been removed, illegal dumps cleaned up by the hundreds, absolutely an amazing program.

And also to clean up the water, a relic of coal mining camps past when people had a little pipe that dripped a few drops of water from the kitchen perhaps or the wash basin, the only water in the house in those days, into the yard and it seeped into the ground. We brought in city water and now they have dishwashers and commodes and showers and that little straight pipe, we forgot about it, but it's now gushing 24 hours a day into streams and literally making the streams running sewers. And the Corps has undertaken with us the chore of trying to, over the long haul, clean these things up and it is an amazing program that is working beyond anything I ever

dreamt.

But one of the biggest headaches we have had, of course, is getting rid of these straight pipes. And the Corps was tasked with assisting the State and other agencies in trying to do that and the Corps' task was to take areas that were not accessible to a regular sewer line extension and build innovative waste water treatment programs, sand dune lagoons, various other types of things, to gather up sewage from 20, 30 homes and filter it and let it be disposed of somewhat naturally.

But we have really hit a snag. We run into the bureaucracy of the Corps because the Corps insists that all, practically all, projects must be approved above the District level, in Washington. But these are tiny projects as they go. For example, I am looking at the Sally Stevens Branch project. That is a sewer line extension for 60 households. The total cost is \$66,000. But it was kicked upstairs, like all of them. The District Engineers weren't allowed to proceed without being approved by Washington. They waited four months for Washington to approve the design of a sewer line extension. The estimated cost to the taxpayer of that Corps processing and delay was over \$36,000. That is over half the cost of the project at the outset.

Now, are we growing--we are not growing the Corps on this money are we, General Ballard?

General Ballard. I don't think so.

PROJECT COOPERATION AGREEMENTS

Mr. Rogers. And there is a bunch like that. And Secretary Westphal and I have talked about these. Last year in the bill, as you will recollect, we included language about the PCA process, to streamline the PCA process--that is the Project Cooperation Agreement process--so as to try to get rid of this problem which we talked about last year. We even included language in the bill directing a report on it by February 1st and I haven't seen that. I don't think it has been filed, has it?

Dr. Westphal. No. I still have the report, it is in my office now.

Mr. Rogers. But I think aside from the PCA delegation question, these so-called 531 projects, these tiny, innovative, unique to this region projects--I don't think any other section of the country is doing this--these are tiny and they don't require very much investigation. Why can't the District Office be able to proceed on these that are so simple?

And, Secretary Westphal, you and I have talked and we are going to talk some more but, I wanted to be sure that we got this question on the record because it is of vital importance to me. The Corps' part of the PRIDE Program down there, although the State is a huge partner and the local governments are pitching in as well, and civic clubs, and civic people by the tens of thousands are involved, but it is the Army Corps of Engineers' piece of getting rid of wastewater and cleaning up those streams that is the central core of what that PRIDE Project is doing for about a third of the State of Kentucky, a third of the geography.

So, I know we will talk more but could you give us something for the record.

Dr. Westphal. Sure. Well, I have been down there to see those projects. In fact, when General Van Winkle was the Division Commander there, we travelled together to see some of those projects. They are truly impressive, and I think you are probably doing more to clean up the waters of the United States in your district than almost anywhere else in the country. I think that is a tremendous contribution you are making, and as I told you, I am committed to working with you and with the Corps to streamline that process.

But also the delays and problems are also sometimes due to the lack of resources from communities that are very poor, that can't meet the cost-sharing requirements. We have got to find ways to fix that problem.

Because in the long-term and in the comprehensive watershed idea, which is also something we are proposing in our budget as an initiative, you have got to weigh the benefits that you are creating for the environment versus the small cost to the Federal taxpayer of doing this kind of work. So, I am your biggest fan on this thing and I know the Corps is, and I know they are very anxious to move faster and more efficiently on this.

We have a good working relationship with your PRIDE organization. I think we just need to find the ways to improve that, and I am committed to doing so, and we will work with you to do that.

Mr. Rogers. Well, I appreciate that very much. We had this same conversation last year and we are still waiting and I was hoping that we wouldn't have to have this conversation this year. I am being very polite today.

Dr. Westphal. I appreciate that.

Mr. Rogers. But let not my soft voice disarm you because we must see this through quickly. And if we can't delegate a \$66,000 sewer line extension for 60 households, if that has to be approved in Washington, and you can't trust a District Engineer with that kind of a figure, then I wonder whether you need District Engineers at all.

General Ballard, what do you think about that?

General Ballard. If my memory serves me correctly, this is the second year we have had this conversation.

Mr. Rogers. That is exactly right.

General Ballard. Every single day, Mr. Rogers, here recently we have had inquiries from mayors of small cities and towns about the possibility of the Corps helping them deal with the problems that you spoke about. It is a growing national requirement. But in addition to addressing the small problems, I am firmly convinced that we have to do something to streamline the process. That it is, as you have noted in the past and as far as I am concerned, it is very bureaucratic and very clumsy. The recommendations that we made and we have done some streamlining, but the recommendations that we have made is that for projects \$25 million and below that the District Engineer has final approval authority. A Division Commanders would deal with \$300 million and below. And only those above that threshold would come to Headquarters. And there is a process of concurrent review of the feasibility report.

The thing that I am concerned about is how do we streamline our process and aggressively do the things that the Nation is expecting us to do? I am absolutely convinced that my District Commanders and Division Commanders have sufficient staff that they can make the judgment on these types of issues.

Mr. Rogers. Where is it getting stopped? You believe that, the Assistant Secretary believes, who is stopping this then? I mean you have had two years.

General Ballard. Our procedures require us to send the stuff all the way up to Washington.

Mr. Rogers. Change the procedures. You can do that, can't you?

General Ballard. No, sir, I cannot.

Mr. Rogers. Who can do that?

Well, can you do that, Mr. Secretary?

Dr. Westphal. I can. Absolutely. Some of these changes would require some concurrence from OMB and the White House but the answer is, yes, there is a process of guidelines that we provide on all these different types of projects.

Now, we have to ensure a number of things. For example, the policy review, which is one of looking at whether--mostly on big projects, we are talking about multi-million dollar projects--policy review, where should that be done? What are the appropriate checks and balances to make sure that errors and mistakes aren't made, that we are sending reports to both the White House and eventually to Congress that have been fully reviewed.

The review process, if you take a project that has lasted 10-to-12 years in some cases, and we see many, or 5, 6, 7 years and you look at those projects, the review process is not what is taking up all that time; it is the study time. The review process may take 6 months or a year, but not 7 year or 8 years, that is not the problem.

A lot of times the problem is the fact that the non-Federal sponsor wants certain conditions in the PCA and the Government can't accommodate those conditions because of existing laws and there is a negotiation that takes place. And, so, it is--for the bigger projects--for the 531s, it is something that we can handle, but for the bigger projects it is a relatively more complex issue.

Mr. Rogers. I understand that and I fully appreciate that there has to be some policy or overlay of all projects but these tiny ones, these 531 projects, all of which are tiny, can they not be delegated back to the District?

Dr. Westphal. True. The 531s, and there are a variety of other projects of that magnitude around in other sections, in other language in previous water bills, where that can certainly happen, yes.

Mr. Rogers. We literally have dozens of these projects in the process of being reviewed by Washington. I don't think it would take too long to study them in the first place, but number two, why? Why not let that Corps, that District office handle it because these are routine, they violate no policy, they require no policy. They are just plain, old water-line extension, sewer line extensions.

Thank you.

Mr. Packard. Can we come back to you on a second go around?

Mr. Rogers. Thank you.

Thank you, Mr. Chairman.

Mr. Packard. I am not familiar with that, but I would be extremely upset if we had \$50,000 project in my district that took three years to get through the process. There has got to be a better way. We will talk about that concept a little bit later in some of our other questions.

We will go to Mr. Edwards.

CONGRESSMAN EDWARDS

Mr. Edwards. Thank you, Mr. Chairman.

Secretary Westphal, thank you, for being here. General Ballard, thank you for your many years of service to the Army and the people of this country. General Van Winkle, Mr. Caver, thank you all for being here.

Just as a general comment about some of the difficulties the Corps has faced, while I do respect there are serious questions that you need to review and we need to review, there are some who have suggested it is a crime to try to expand the number of projects the Corps is involved in and if that is true there are going to be a lot of members of Congress who will be in that prison with you. And I think if you look at this Subcommittee, Mr. Chairman, and the number of requests from members on both sides of the aisle, it totals in the hundreds literally. I think that the vast majority of those are very responsible, reasonable requests, while recognizing the objectivity the Corps must have in reviewing those must be of high order.

Let me ask, since floods do happen one at a time, let me ask about a specific project in Texas, if I could, not in my district but in the Dallas-Ft. Worth area, dealing with the-- actually it is the Johnson Creek project in the upper Trinity Basin in Arlington.

I know there have been a number of homes flooded repeatedly. I think part of the proposal is just not spend millions and millions building structures, but spend some money just buying the houses and moving those families.

Can you tell me if--or could someone on your staff or someone here tell me whether the Corps has the authority to initiate construction on the Johnson Creek project in Arlington, Texas; and if so, how much could be spent the first year and how much would the total cost of that project be?

Dr. Westphal. I don't know if we have got the information. We do? Okay.

General Van Winkle. Sir, we do have the authority to do that. Our capability for 2001 would be \$6 million.

[Clerks note: The Corps of Engineers requested that the following statement regarding ``capabilities'' be placed in the record.]

Although project and study capabilities reflect the readiness of the work for accomplishment, they are in competition for available funds and manpower Army-wide. In this context, the FY __ capability amounts shown consider each project or study PY itself without reference to the rest of the program. However, it is emphasized that the total amount

proposed for the Army's Civil Works Program in the President's budget for FY 01 is the appropriate amount consistent with the Administration's assessment of national priorities for Federal investments. In addition, the total amount proposed for the Army's Civil Works Program in the President's Budget is the maximum that can be efficiently and effectively used. Therefore, while we could utilize additional funds on individual projects and studies, offsetting reductions would be required in order to maintain our overall budgetary objectives.'

Hereafter, this statement is referred to as ``the usual qualifications.'

Mr. Edwards. Okay. And then the total cost of the project? I understand it would be \$12 million?

General Van Winkle. That is correct.

Mr. Edwards. And that would include the purchase of how many residences that have been flooded repeatedly? Is that 140 something?

General Van Winkle. I don't have that with me today.

Mr. Edwards. If you could follow-up on that, I would appreciate that.

[The information follows:]

JOHNSON CREEK, TEXAS

The Johnson Creek project would acquire and remove a total of 140 structures within the watershed that have been flooded repeatedly.

DALLAS FLOODWAY EXTENSION

Mr. Edwards. Let me also ask about a major project, the Dallas Floodway Extension on the Trinity River also in Texas. As you know, this is a major project that would take a number of years. I used to live along the Trinity River in the Dallas area and I know how serious the flooding is there. Can you tell me if the Corps has the authority to initiate the construction on that project; and, if so, and if construction money were to be provided, I don't know that it will be, but if it were to be provided, how much could be spent in the first year? I don't know what the capability is on that.

General Van Winkle. Yes, sir. We do have the authority and the figure for that capability is \$6.2 million.

Mr. Edwards. And that authority was, I think, extended last year to cover some environmental issues involving the project; is that correct?

General Van Winkle. Yes, sir, that is correct.

Dr. Westphal. That is a very good project and I think both you and I have been out there to see it and I noticed that recently it was attacked as not a very good project. But I can tell you from my vantage point, I think that is an excellent project and there are a lot of very positive environmental features to it and we are working hard to address the needs of some of the poor communities along the Trinity.

Mr. Edwards. Very good. And, Mr. Chairman, I have a number of questions I will submit in writing, in deference to other

members of the Committee, I will terminate my questions at this point and wait for the second round.

[The information follows:]

CONGRESSMAN KNOLLENBERG

Mr. Packard. Thank you very much, Mr. Edwards.

Mr. Knollenberg.

Mr. Knollenberg. Mr. Chairman, thank you very much.

I do appreciate your willingness to defer to us who are leaving for another hearing and I will take advantage of that and welcome, of course, our panel today, Dr. Westphal, and General Ballard, obviously, I wish you the very best in your future endeavors.

Let me get right into a question. This would probably be best served up to you, General Ballard, in terms of this concern ``The Post'' has at least about the conduct of the Corps and some of the things that are happening there. And we believe--I think, I speak for myself but I think this Committee has always had good things to say about the Corps--we have worked well together and we want to see that continue but there are some things that are disturbing about that and I think it is important we get this out so that we talk about it here and then the world can learn what is actually taking place.

There have been no small number of negative reports that have come about. One of the things that I want to focus on just briefly--there are others--but take the Red River project, which I know has been around for a bit. And according to the numbers that I have and you can respond to these, that something like \$2 billion went into that project and that included the 5 dams, the 150 dikes and elimination of 50 miles of twisting riverbends and some other things.

The whole point of this, I understand, was to make it available for barge traffic. The problem is there are no barges that are of any consequence. There are some but there are not near as many as were predicted. And I think along with the original predictions or estimates by those that architected this whole thing, that there would be some 15,000 jobs that would be created as well. Apparently that hasn't happened.

And I know it is disturbing to you to read this in the newspaper and it was a very extensive news story in ``The Post'', that there was some concerns that everybody must read into that. For example, I know you challenged the point of the 37,000 employees, saying it was 24,000. Can you give us some idea of the accuracy of the projections that were in that report or can you challenge those projections as to what really was to be accomplished by this project. Were we really to get to a point where we had some new jobs in the range of 15,000 and we had barge traffic that would mirror what you originally or they originally intended to the Corps? So, if you would respond to that?

Mr. Packard. General Ballard, before you respond, let me change the way that we may handle this hearing on this particular issue. Rather than having--and we have, I think virtually every member of the Subcommittee here today--rather than

having each one bring that up in their questions, let us use this opportunity to take care of this whole major issue while you have initiated the issue so that if any other members have questions on this issue, the accusations and the allegations made in newspaper reports about the integrity of the Corps, let us discuss that now and then lay that issue to rest and not bring it up as each member asks questions.

Do you mind doing that?

Mr. Knollenberg. No, not at all.

Mr. Packard. General Ballard, would that meet with your approval?

General Ballard. That is fine, sir.

Mr. Packard. Let us do that so that we open this up a bit as a single issue that we discuss and then lay it aside.

General Ballard. The question that Mr. Knollenberg asks is a very good question because it goes to the heart of the accuracy of our forecasting. And in 1983, when we did the work on the Red River, we were forecasting the projected barge limit of about 3.5 million tons. Well, in 1998, we were at 3.75. Now, what we didn't know was the makeup of the traffic, the products that were being delivered, simply because when you look that far out it is rather hard to predict what the growth is going to be and the landside constructions and things of that nature.

But I think what was really important here is that when you look at the inland waterway system that we have in this country and how important it is, we are currently moving about a half a billion tons annually. And when you think of what that means to growth, economic growth, what it means to farmers and other producers of bulk materials, and what it means for the competition of this country, you have to ask yourself, what is the alternative?

How do you take, if you don't make wise investment in the inland waterways, then where do you move this volume of goods? How do you move a half a billion tons if you don't--you push it either on rail or you push it on the roads, which means more trucks, and I think you understand what that portends to not only the environment but the cost of goods.

We stand by what we did with the Red River. Now, I took a good hard look at that and we tried to go back to see what we were projecting 20, 30, 40 years ago. And unfortunately our records are not that clear but current information tells us that the actual traffic at the six projects on the Ohio River has met their current projected traffic and that we are slightly ahead on the Red River.

So, as a result, I think our process is pretty good in making those type predictions.

Mr. Knollenberg. What do you say to the story? And I know that has appeared several times that the books were actually cooked by the Corps in a way to present facts and figures, not just the Red River, but others. Now, that is a pretty damning statement, I would say, by the press.

General Ballard. Sure it is.

Mr. Knollenberg. It suggests you are making work for yourselves without actually having oversight. I know there is oversight, but tell us, react to that, if you will? Respond to that. Because the multiple reviews that they have--I think the Executive Branch is brought into this, too.

General Ballard. The Executive Branch--and I refer, again,

to this little chart, if you have it here. How did I react? Well, once I--I didn't have a dog, but I might have kicked it. Once I got over the emotions, it quickly told me that the media did not have a full understanding of what we do and how we bring a project to fruition. In this particular one, where we are alleged to have ``cooked the books'', what we were talking about was a number that relates to demand. A number that would say, ``what is the demand?''

Let's take agricultural products, corn. We are trying to predict how much corn would be grown by the farmers in the region, and shipped by inland waterways in 2050. So, if that number says that demand is going to be high, that means more barges, and more barges means more locks, et cetera, et cetera. If the number is low, than it may mean no construction. The difficulty of this is trying to find out what is going to be the average yield per acre on corn in the year 2050 when you look at biotech, for an example.

Mr. Knollenberg. You cannot do that.

General Ballard. So the reason why we have taken 7 years and \$50 million is that we have involved literally thousands of stakeholders in this process, four governors, their complete staff; the agriculture industry. It is a massive job trying to get close to what the real process is going to be in the year 2050. And it is key that we work this, because let us say, down the lower Mississippi, an average tow is about 25 barges. One barge is 84 tractor trailer loads of product. We are moving about 15 barges in an average tow on the Upper Mississippi, and those locks will handle that thoroughly. If you are going to move more products, you need larger tows simply that is an economic requirement for that, which drives what we construct. That is the problem. Plus we are trying to figure out what is going to be the land-side construction? What new industries are going to be created as we do this in the year 2050?

So to say that you ``cooked the books'' is a little bit ridiculous because our cost sharing partners, the navigation folks and everyone else, are very much involved in that, and as you can see on the study phase, we are at the point that is on there, we have already had some agency and public involvement. But once we produce this draft report in December, that thing goes out again for public review, and we have to be prepared to defend each and every number that is in that document, by a variety of people, the environmentalists, the navigational folks, the agriculture folks, everyone. So how can you ``cook it?''

Mr. Knollenberg. Looking from the perspective of today, would you have done anything different if we are not getting the predicted number of jobs, we are not getting the particular--even close to the figures that were estimated that would be shipped up and down the river, what would you have done--hindsight is great, but what would you have done differently if anything, or what could you have done differently if anything?

General Ballard. This is going to surprise you. I wouldn't have done a thing different, because I am firmly convinced, and an investigation is going to show that our process was absolutely good.

Now, how did we sort of get into this? If you all recall in

the front of this committee----

Mr. Knollenberg. Presuming you got into anything.

General Ballard. If we got into anything. Well, the media thing.

CONDUCT OF UPPER MISSISSIPPI STUDY

Mr. Knollenberg. That is what I would like to hear about.

General Ballard. Yes, sir. Let us address the cost first of all. This project is about--what is the total cost on it?

General Van Winkle. Anywhere between 1 and 1\1/2\ billion dollars.

General Ballard. A billion dollars that we are talking about, this total project. And if you spread that out over 20 years, the income stream of 20 years spread out, I mean you are talking 5, 600 million? And we have some single projects that are larger than that, so I am not going to get a lot of growth in my organization from this one project. That is point number one. So we need to set that aside, that we are trying to grow the organization.

What happened was this study was in Chicago, and when we reorganized--you remember we went from 16 divisions to 8, had a little testimony time before the committee on that one. We moved the study team from Chicago to St. Louis, and to be honest with you, we created a new team. That slowed us down a little bit. If I had to do one thing over again, I probably wouldn't have moved that study team, but it made sense to move it at the time. That is the only thing I would do differently in hindsight. I am convinced that we are on the right track on this study, and that we are going to get to where we need to go on this thing. We haven't even completed the draft yet.

Mr. Knollenberg. I will yield, Mr. Chairman.

Mr. Packard. Thank you. On this issue, Mr. Visclosky, do you have questions?

Mr. Visclosky. No.

Mr. Packard. Mr. Edwards?

Mr. Edwards. No.

Mr. Packard. Mr. Pastor?

Mr. Pastor. Yes.

Mr. Packard. Mr. Pastor.

ASSISTANT SECRETARY'S ROLE

Mr. Pastor. In reading the article, it seems like the Secretary was unaware of the report, or it seemed that the reporter made it seem that way. I just wonder what the Secretary has done since then in trying to overcome the harshness of the article, and also, thank God that General Ballard didn't have a dog. That would be another story.
[Laughter.]

Dr. Westphal. The part of that article that presumed I didn't know something was going on had to do not with the Upper Mississippi navigation study. It had to do more with some material that the reporter had gotten concerning, quote, ``growing the program'', some set of slides and some memorandums or e-mails or something. So I was unaware of that. But that was an internal Corps of Engineer process of working

with the divisions and the districts to determine what the needs out there are.

The way I see this process moving and the way we have moved it, at least since I have been here, and I know it has been the case in the past, is that we do two things. We submit a budget first to OMB, and in that budget are a lot of things that we think we should be doing that come up from the field, ideas that are generated by constituent groups, by members of Congress, by sponsors and folks like that. We take a cut at that. We submit that to OMB. They take a further cut based on the President's requirements and the budget limitations, and so you eventually get a budget that may not have a lot of those things that we think we ought to be doing, but is limited by spending requirements and by trying to address the current needs out there that we are already involved in.

And the other way we do that is through our WRDA proposal. Again, the same typical type of process, where I submit a proposal--our proposal today is sitting at OMB, and there are things in there that I think we should be doing that serve the nation in a variety of ways, but the Administration has to look at it from a variety of standpoints, like what is the other agencies view of some of these suggestions? Do they conflict with what they are doing? Do they overlap other programs in the government? Are we doing the same thing in more than one agency; should we not be redundant? They look at it for that kind of consistency. They look at it for--again, we had a fairly big Water Resources bill in 1999. How big a bill can we afford to have in the year 2000? That puts a great stress on your committee, Mr. Chairman, to address all of those needs and interests. So if you talk about growing the program, that is the process we follow. That is the process at the Corps. It is a groundswell of activity at the local level, moving up and eventually getting cut along the way, first by General Ballard, and then by myself, and then by eventually the White House before it gets to you, and then, of course, you could take a broader look at it.

So that is what that particular matter had to do with, not the Upper Mississippi navigations.

Mr. Packard. Any further questions?

Mr. Pastor. That was my question.

Mr. Packard. On this issue again only, Mr. Rogers, do you have a question?

MANAGEMENT OF THE CORPS

Mr. Rogers. Very quickly. The Secretary of the Army, Mr. Caldera, issued a press release about this, saying that he was reviewing the management of the Corps, and I am quoting, ``would expect to consider a number of options, and if appropriate, make any changes as soon as possible.'' Is he--will he be offering proposed changes in the structure of the Corps, do you think, Mr. Secretary?

Dr. Westphal. I don't know what he is actually going to propose, Congressman Rogers, and it is hard for me to speculate, because I have been kept out of that process, I think appropriately so. It was more or less to take an independent look at overall the management and policy oversight

of the process. You know, there is ample room in Title X and in the authorities that we have to capture that management and that oversight, and I think that he is just going to address that, but you know, I don't know.

Mr. Rogers. He understands though that if he is proposing to change the structure of the Corps, that Congress may have a little word in that, does he not?

Dr. Westphal. Sure.

Mr. Packard. May I expand on that?

Dr. Westphal. Yes, sir.

Mr. Packard. We would expect that we would have some involvement in any changes in the management process of the Corps, any changes that would be recommended by either you or the Secretary of the Army or by General Ballard. I think that General Ballard, his answer to some of the questions was that he wouldn't do anything differently than what he has already done. So do I interpret that to mean that you would not make any recommended changes in the procedures and the management?

General Ballard. I am satisfied that we are in a correct posture right now. I have not participated in the process either, so no one of us knows.

Mr. Packard. Any changes though, I would hope that you would not overlook this committee. I think Mr. Rogers is absolutely correct, we would be----

Dr. Westphal. I believe the Secretary is very sensitive to that, and the one issue, one aspect of this that I have talked with him about is I have suggested that anything he does, he should certainly let Congress know and work with Congress.

Mr. Packard. I would assume he would consult with you at length on any changes, because you would be the one to implement those changes.

Dr. Westphal. Yes.

Mr. Visclosky. Would the chair yield on that point?

Mr. Packard. Of course.

Mr. Visclosky. There is at least some speculation that there would be a change in the flow of the decision making from the military to the civilian side within the Corps. Is there any justification for those rumors, so to speak.

Dr. Westphal. Title X, again, the law, is very clear that the Secretary of the Army is the head of the agency, if you want to just simplify it, okay? The Corps of Engineers is part of the Army and he is the Secretary of the Army. He delegates the program, the Civil Works part of the program to the Assistant Secretary of the Army for Civil Works. That is me. Those delegations are spelled out in something called the General Orders. And those are there. Those are clear. If they need to be clarified, maybe that is something he is going to work on, but it is clear that the authority is in a civilian, under Title X and under the general orders, that the----

Mr. Visclosky. I guess I should rephrase that, that there would be less discretion at the district and division level, and more decisions being made at the headquarters?

Dr. Westphal. That I don't know. I don't know. I have not heard that and I have not seen that.

Mr. Packard. I agree. I would hope not too. Well, on that point, let me read to you the exact quote, because I think that Mr. Rogers brings it right to the front, that I was hoping we

could discuss. The Secretary of the Army issued a statement and this is what he said: ``Earlier this month I asked the Under-Secretary of the Army''--I believe that is you, is it not?

Dr. Westphal. No. I am Assistant Secretary. The Under-Secretary is above me.

Mr. Packard. Okay. ``To review the Army's management of Corps of Engineers, to insure that we provide the appropriate leadership and oversight.'' Again, I can't believe that that review will not involve you; I would assume so.

Dr. Westphal. I presume that it will when he is ready to--when that assessment has been made, yes.

Mr. Packard. Mr. Frelinghuysen, do you have any questions on this point?

Mr. Frelinghuysen. No.

Mr. Packard. You do not. Mr. Latham?

Mr. Latham. No.

Mr. Wicker. Just a couple of follow-up questions on this point.

Mr. Packard. That is fine.

Mr. Wicker. General Ballard, you say the Civil Works Program is only 24,400 strong, not 37,000 as implied by the media. Do you have any idea where they got that higher figure; is there a way to look at it and come up with that or stretch it, or is that just plain wrong?

General Ballard. I think what they did, look at total strength of the Corps, and assume that it was just Civil Works.

Mr. Wicker. Is the total strength of the Corps 37,000?

General Ballard. It is a little bit larger than that--I mean, 37,000? No, sir. The total strength of the Corps is more like about 35,000.

Mr. Wicker. But that is probably where they got that.

General Ballard. I am assuming that is where they got that from. They didn't ask us. And I think also that they included some military--we are broken down in funding in about three different ways: Civil Works, Military Programs, where we do all the MILCON and support, and an area we call Support for Others, where we provide support to other federal agencies, programs such as FUSRAP and et cetera. But the point that they were trying to make is that the Civil Works appropriation was 37,000, which is absolutely wrong.

COST BENEFIT ANALYSIS

Mr. Wicker. Well, you know, I sort of agree with Mr. Edwards. I mean, if people are going to be accused of growing the Corps, there is going to be a lot of company in that particular indictment.

But let me just follow up on the point about ``cooking the numbers''. And I appreciate the exchange that you had, Mr. Secretary and General Ballard, with Mr. Knollenberg about how can you possibly forecast that far in the future when there are so many variables. Has there been any recent study about the accuracy of cost benefit analysis over time? I was here as a staffer for another committee back in the early '80s when Congress was talking about the Tennessee Tombigbee Waterway, and of course, a very major project, and all the talk there was about whether the cost benefit analysis was correct. And my

``Ten-Tom'' friends tell me that actually this has been cost effective and has exceeded expectations.

But I just wonder, for the major projects that we have had over time, over decades, and that this committee has approved, based on the figures that you have given them, have the numbers been ``cooked''; have they been correct, and is there something that I can look at to see how we are doing as far as getting accurate forecasting?

General Van Winkle. I will try to answer that question. In a generic term, we have had a National Academy study look at our process.

Mr. Wicker. National Academy?

General Van Winkle. The National Academy of Sciences. Excuse me. And they have looked at our process for doing reports, and although they did not look at specific projects and specific numbers, they gave us a very detailed look at our process, and in general, although they made some suggestions, in general, they found that our process was pretty sound in terms of how we do it and quite comparable with other processes.

Mr. Packard. General, has the National Academy of Sciences made that report available to us?

General Van Winkle. Yes, they have. It is about a year old. I believe it was in May of '99, and we will certainly make that copy available to you.

Mr. Packard. Okay.

Mr. Wicker. They have looked at the process.

General Van Winkle. They looked at the process, correct.

Mr. Wicker. And they basically said that your process is being done according to acceptable standards?

General Van Winkle. That is correct.

Mr. Wicker. But as far as you know--and I will let you answer this on the record, if somebody maybe in your agency can go back and look--as far as you know, there has been no study of specific projects and how the effectiveness pans out, based on what has been told to the Congress, over decades of time?

General Ballard. On the cost benefit ratio, that is the way I understand it.

General Van Winkle. That is correct, cost benefit ratio.

General Ballard. I am not aware of it.

General Van Winkle. No, we don't have a study that goes back retroactively and looks at that, if that is your question. We don't have a process that says, ``Let's go back now and look at our projections and compare those.'' We do not have that at this point, no.

Mr. Wicker. Have you substantially changed the way you make cost benefit analyses now in the year 2000, the way you did in 1970 and 1980?

General Van Winkle. I don't believe there has been a substantial change. We follow Principles and Guidelines which are government wide in nature.

Dr. Westphal. If I could just add to that. We used to operate under something called the Principles and Standards up until the Reagan administration. When the Reagan Administration came in, if you recall, because of budget deficits, because of the desire on the part of the President to reduce the role of government in some respects, he ordered the Secretary of the

Interior to initiate a review of the Principles and Standards.

Now, the Principles and Standards were rules that we had to operate under. There was no choice about them. But they allowed the Corps to look broadly at a number of variables when they did cost benefit studies, which included environmental issues, obviously, the economics, and regional economic variables and things like that.

Secretary Watt at the time, came in and, using the Water Resources Council, came up with something called the Principles and Guidelines. And they required only one matter to be really looked at, and that was national economic development.

Now, this doesn't mean--they are guidelines, so it does not mean that the Corps can't look at other things, but if you want to interpret the methodologies that you use today, you are fairly limited by the Principles and Guidelines. Now, those were done in the 1980s, 1983, about there.

The National Academy of Sciences, the study that General Van Winkle just mentioned, they were asked by the Corps to look at the Principles and Guidelines and see if they fit today under today's economy and today's national priorities. They did, and I think General Van Winkle's assessment that they thought the process was a good process and made some recommendations for improving the process. But they did make recommendations that we should go back and reconsider whether or not we want to broaden the Principles and Guidelines to include those things that were under the previous Principles and Standards, and I think we are going to do that.

The Secretary of the Army's call for the National Academy of Sciences to look at the Upper Miss economic model, is to, in a sense, to get to your question, Congressman, which is to be able to go back, even though this project is very early on in its development here, to go back and look at the mathematical modeling and the economic work that is being done on the Upper Miss, because there has been a lot of work done already, and perhaps help us to identify whether or not there ought to be some improvements in the methodology, not from the standpoint of wrongdoing, but from the standpoint of, you know, is there a better way to do this? And as you know, you can get 2, 3 economists in a room, and they are probably not going to agree on what the best model is to do anything. But that's in part, I think, why he called for that kind of a study, to sort of help, but I think we would look forward to getting those kinds of ideas, not just for this particular study, but for any other study.

ALLEGATIONS OF MISCONDUCT

Mr. Packard. Are there any other questions on this specific issue? I will ask the last one then perhaps.

General Ballard, you mentioned in your statement that with regard to the Upper Mississippi River study, you directed an internal investigation in accordance with Army Regulation 15-6, and that no misconduct was found. Would you explain, elaborate on what this Army Regulation 15-6 is?

General Ballard. It is a regulation that gives commanders, those of us who have UCMJ authority, the right to do internal investigations in terms of criminal misconduct, possible

criminal misconduct.

There was an allegation that stated a Corps employee, not a uniform employee, but at a lower grade, had allegedly done some wrongdoings as it pertains to Mr. Sweeney, the whistle-blower. My requirement, my legal requirement requires that I take a look at that, and since it was not a senior leader, and not an individual that had been identified as part of the DA investigation, I had an internal investigation take place to look at the alleged wrongdoing. We came up with nothing. I have provided that complete report to the DAIG, the HAC S&I and all the other folks that are doing it, so that they can expand on it or do whatever. That is what that was about.

Mr. Packard. Thank you very much. We will then conclude any questions or discussion on this item unless it is something urgent to each member. And we will return back to our normal process of questioning, and Mr. Pastor would be next.

WORK FOR SCHOOL DISTRICTS

Mr. Pastor. Thank you, Mr. Chairman. Good morning and welcome.

General Ballard, first of all, let me thank you for the fine work you have done, and we are going to miss you, but I know that wherever you go, you will do well.

General Ballard. Thank you, sir.

Mr. Pastor. You and I had a conversation about the National Association of Engineers who were concerned that the Corps was getting involved in work that should have been farmed out to the private sector, and the Los Angeles School District came up. Would you comment on that, please?

General Ballard. Yes, sir. And then I would also like General Madsen----

Mr. Pastor. General Madsen.

General Ballard. [continuing]. Who was actually doing the work. He could comment further.

Mr. Pastor. If you would be kind enough to ask him up, I would appreciate it.

But, General, you may want to comment on, generally, on that whole notion of doing more work by the Corps that rightly belongs in the private sector, and specifically you may want to talk about the school district.

Mr. Packard. General, if you would state your name and your position for the record.

General Madsen. Brigadier General Peter Madsen. I am the Commander at South Pacific Division Corps of Engineers.

Sir, with regard to LA schools, I will describe, a little bit, our involvement. We were asked by the LA Unified School District to help them with some of the problems that plagued their schools, and out in front of the school district were some real funding opportunities to do a couple things. One, state funds were available for building new schools as well as Federal Communications Commission funds for Internet wiring the schools, that is, going in and putting in new hard wires and servers and equipment that were available if applications could be made for these funds. And after about 3 years of challenges, trying to put together the packages for the funding for either one of the two opportunities, they brought some new leadership

in for the Unified School District in LA, and the leadership came to us and asked us if we could help them with those two opportunities. And one of them--we call it the e-rate, which is Internet wiring the school and bringing all the communications equipment to the schools.

In a short period of time, working with their staff as kind of an adjunct to their staff--recognize that the school district staff doesn't have the engineering capability and contracting type of skills that we have--but in a short period of time over the Christmas holidays, we worked real hard to meet an early January deadline to put in applications for those FCC funds, and we believe that the applications are in now, that there is potentially \$431 million that could come to LA schools this summer if those applications are approved.

The critique that we have always gotten in the press is that we are taking away work from the private sector by what we are doing, supporting the school district staff, but from our vantage point, a very limited engagement working with the school district has allowed potentially, in this one opportunity, \$431 million of private sector work that will go into the schools this summer to really fix as many as 400 different schools in LA. And that was the first opportunity. We are working with them closer right now, again, to kind of put in the packaging for state funds to build new schools, and we will never construct those schools. We will never engage the private sector to design and to build those schools, but first we are helping the school district staff put the package of proposals together to get the funding.

Mr. Pastor. You have a comment, General Ballard?

General Ballard. Yes, I do, sir. The work that we are can best be characterized as ``government'' in nature. We are supplementing the LA school staff. They don't have staff engineers to do this work. This work, was reviewed for legal sufficiency by both my Chief Counsel and the Army General Counsel, and they found that as part of our support for this type of program, that it was legal and appropriate. The bottom line is, we will have more private sector work, not less, because if we help them to get their contracts out in the street and select a contractor to do this work, I mean that the private sector will do it, and that is all we are doing. We are developing the scope of work for them, putting the contracts out on the street and helping them to go through their contracting process, but we are not executing any of that work, not a thing. And so as far as we are concerned, we are not in competition, we are just helping a government organization that is strapped for technical capability, and that is all we are doing, we are providing that to them.

RIO SALADO, AZ

Mr. Pastor. General Madsen, what is the status of the credit agreement and project cooperation agreement for Rio Salado? Do you have any good news to report?

General Madsen. Sir, the credit agreement is pending approval based on resolution of the Committee notification letter, and it is at OMB presently. Rio Salado projects, in the President's budget, is \$2 million to both the Phoenix and the

Tempe region, and next year, fiscal year 2001, in April we will start construction on the Phoenix, and then in July start construction on the Tempe region.

Mr. Pastor. Secretary Westphal?

Dr. Westphal. I knew that you would ask this question.

Dr. Pastor. Thank you. That is very important to me. That is why I am asking the question.

Dr. Westphal. I know. I called OMB last night, and I said, ``I am not going to testify unless you give me an answer to this question.'' And they did give me an answer this morning, which is that they have approved the letter to go to you, Mr. Chairman, and the Chairman of the Senate Appropriations Subcommittee, asking for the credit agreement to be okayed by the committee.

Mr. Pastor. So I need to talk to the Chairman.

Dr. Westphal. You need to talk to the Chairman. He is your next step in the process.

Mr. Packard. Before you talk to me, I need to hear from OMB.

Dr. Westphal. The letter is coming to you this morning, sir.

Mr. Packard. I know, in the mail. Mr. Frelinghuysen?

NATIONWIDE PERMITS

Mr. Frelinghuysen. Thank you, Mr. Chairman. Gentlemen, good morning. Mr. Secretary, two areas of questions, first to General Ballard, some questions that relate to the Nationwide Permit 26.

General, what are the impacts of the new Nationwide Permit on New Jersey, one of two states that has assumed its own wetlands permitting process?

General Ballard. Impact on New Jersey?

Mr. Frelinghuysen. Yes.

General Ballard. Okay.

Mr. Frelinghuysen. New Jersey and Michigan both.

General Van Winkle. Right. Nationwide Permit 26 would not apply in your state, because your state has retained the authority to do that regulation.

Mr. Frelinghuysen. It would not apply.

General Van Winkle. That is correct.

Mr. Frelinghuysen. What are the costs to the Corps to implement this new Nationwide Permit, and what is the estimated time savings associated with the new permit?

General Van Winkle. The cost estimate is--what we did is analyze. If you wish to retain the same amount of time to issue permits, given a somewhat increased workload of the nationwide permits, our best guess is on the order of \$6 million, to be able to achieve the same level of service in issuing these permits.

Now, of course, we have not asked for any additional money in that regard in our budget, and so what that means is that you would reflect that amount of money in terms of increased time, increased time to get permits approved.

NEW YORK AND NEW JERSEY HARBOR

Mr. Frelinghuysen. I have some questions that relate to the New York and New Jersey Harbor, and we may need General Rhoades up here. He is coming up. Let me compliment General Rhoades and his North Atlantic Division Staff. They are in my office on a regular basis. I don't apologize for looking after New York and New Jersey, Mr. Chairman. Yes, I am happy to yield.

Mr. Packard. Just for a moment. I didn't hear the last portion of the answers. Is the \$6 million in the budget or not in the budget?

General Van Winkle. No, it is not in the budget.

Mr. Packard. Okay.

Mr. Frelinghuysen. Thank you. Let me thank your staff for continually being in my office, your attention to detail, and their, off the record, I suspect, shared frustration sometimes we have with other federal agencies.

I have some particular questions, but, Mr. Secretary, are you fully committed to fully funding our priority dredging projects in the New York and New Jersey Harbor?

Dr. Westphal. We are. We are definitely committed to doing that.

Mr. Frelinghuysen. Well, what disturbs me, if you are, why has my own state asked that I add funds specifically for the Arthur Kill Project and the Port Jersey Project?

Dr. Westphal. Well, as you know, when we put this budget--
--

Mr. Frelinghuysen. These are additional funds.

Dr. Westphal. Right. When we put the budget together, we get from the Corps of Engineers, my office gets a capability level on all of these projects. What is the capability to do the work in fiscal year 2001, and we base our budget request, our budget submission, I should say, to OMB based on those capabilities. I believe that what we knew to be the capability back then, and what we submitted to OMB and what OMB has put in the budget, in the President's budget, was a capability we understood to be the case back then. Since then----

Mr. Frelinghuysen. So you are saying that these particular projects are not under-funded in the 2001----

Dr. Westphal. Well, they may be, because since then the Corps has reassessed the capability that it has for these projects in fiscal year 2001, and so it can do more work, and it can accommodate more resources, but obviously that came after the President submitted his budget.

Mr. Frelinghuysen. So you----

Dr. Westphal. And we would support any increase, but we obviously cannot----

Mr. Frelinghuysen. But you are capable of doing the additional work if you have the additional funds?

Dr. Westphal. Yes. I am being told by the Corps that that is the case.

Mr. Frelinghuysen. We have issues in the New York and New Jersey Metropolitan region that deal not only with funding issues, which are critical, we want to keep the money going. This is a part of the nation where we have got about 17 million people, we have got about \$70 billion worth of commerce, and we are badly in need of funds to make sure that commerce continues, that jobs certainly are protected and certainly those are earned jobs, but we are also dealing with other

environmental issues, particularly with the Environmental Protection Agency.

So I have some questions for General Rhoades. The Environmental Protection Agency, General, has announced that it is revising the rules for dredge material, at what is called an historic area remediation site. Just for the members' edification, this is something which New Jersey and New York have contributed to over the last 40 or 50 years. It is out in the ocean. It needs to be properly capped. General, what do you believe will be the impact of the EPA's new criteria on accomplishing this----

Mr. Packard. General Rhoades, would you state your name and position for the record, please?

General Rhoades. Yes, I will, yes, sir. My name is Brigadier General Steve Rhoades, and I command the North Atlantic Division of the United States Army Corps of Engineers.

Mr. Frelinghuysen. Now to the question. Sir, EPA has not released the new standards yet. We understand that they are working on those, and they will release them. When the new standards are released, it is highly likely that they will be more restrictive than they are today, and I believe that that will have two major impacts.

Number one, for the material that currently goes to the historic remediation site, there will be increased costs to dispose of that material in some type of process or to move it upland. And number two is that it will increase the urgency for the States of New Jersey and New York to develop more uplands storage sites.

Well, currently, all disposal of dredge materials at this mud dump must meet the criteria--Category 1 criteria. Is the Corps' position still the same, that Category 1 can be disposed of at the site?

General Rhoades. Sir, until the new rules are codified, we will continue to dispose of Category 1 material at the historic remediation site.

Mr. Frelinghuysen. So in fact we can proceed with capping that site, 15 acres, and because it is environmentally necessary to do so?

General Rhoades. Sir, under the current rules we can continue to cap it with Category 1 material.

Mr. Frelinghuysen. Some are suggesting in the larger community, that our government is allowing what might be described as toxic muck to be disposed at this site, but the criteria that has been chosen, we meet the current criteria, but we are not able to dispose it?

General Rhoades. No, sir. We meet the current criteria with the material that is currently being disposed at the historic remediation site. It is Category 1 and it is currently being disposed there. When EPA releases their new standards, I suspect the standard will become more restrictive.

Mr. Frelinghuysen. Do you know what authority the administration is using to update the criteria?

General Rhoades. No, sir, I cannot comment on that.

Mr. Frelinghuysen. If for some reason the new criteria prohibits all disposal at this mud dump, what material will be used to cap the dump?

General Rhoades. Sir, I haven't addressed that yet.

Mr. Frelinghuysen. We are reaching a critical situation here.

General Rhoades. Yes, sir.

Mr. Frelinghuysen. We have an environmental hazard because this dump isn't being properly covered, and people are questioning--even the criteria, the Category 1 has been basically considered to be free of toxic, and now we can't get anything done.

General Rhoades. Sir, I will have to answer that for the record. I am not prepared to today.

Mr. Frelinghuysen. Okay, thank you very much.

[The information follows:]

New York and New Jersey Harbor--Historic Area Remediation Site

The Administration, through the U.S. Environmental Protection Agency, is using the authority of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, to update the testing criteria to determine whether material is suitable for placement at the Historic Area Remediation Site or HARS.

If for some reason the new criteria prohibit all disposal at the Historic Area Remediation Site, the material needed to cap the site will come from clean upland sites or be mined from offshore sand barrow sites. However, the Corps has neither explicit authority nor funding to undertake an effort to mine clean sand to cap the HARS. Since prior capping was accomplished with the placement of category I dredged material, the Corps has not developed a contingency plan for new sources of material nor determined who would pay for this effort.

It is the Corps' position that, under current criteria, Category I material can be placed at the HARS. We have no plans to modify or revoke existing permits that have met the current criteria for disposal at the HARS. When new criteria are proposed by the USEPA, we expect to discuss and finalize a reasonable transition to the new criteria.

MISSISSIPPI RIVER AND TRIBUTARIES

Mr. Packard. Thank you, Mr. Frelinghuysen. Mr. Wicker?

Mr. Wicker. Mr. Secretary, in your complete statement, with regard to Mississippi River and Tributaries Project, you say that the Army is pleased that the fiscal year 2001 budget for the MR&T account is at the same level of funding as that provided by Congress for fiscal year 2000. There are perhaps some of us that are not pleased with that figure. You go on to say that within the total, there are some differences in the proposed allocation of these funds. The fiscal year 2001 budget emphasizes flood protection along the main stem of the Mississippi River. That leaves then the question about funding along tributaries of the Mississippi River, and I just want to make sure where we are with regard to your proposal.

Would this request allow for any new construction starts along Mississippi River tributaries?

Dr. Westphal. Specifically, are you thinking of any specific project?

Mr. Wicker. I am thinking about any of the tributary

projects, including new channeling, new construction, Yazoo River, for example. I am talking also about projects that are already designed and planned.

Dr. Westphal. One example of that would be, for example, Big Sunflower.

Mr. Wicker. Okay.

Dr. Westphal. And Big Sunflower, what I did on that project was to put in a provision for reprogramming of money in the FY 2000 program to continue the contracts that have been awarded on that project, but reduce the new funding for it. Now, the reduction of the funding is because there is a considerable amount of question as to the environmental impacts of that project, and as you know, we are getting a great deal of--well, there is a great deal of action out there to stop these projects. Big Sunflower is one of them. The Yazoo, the pumps project, is another one. And in the case of Big Sunflower, even though we had a recent court decision that I think was favorable to moving forward with the project, there are some other studies that we want to try to undertake. And so I did not want to completely eliminate the possibilities of continuing the project, and that is why I put in the note and got agreement at OMB to allow me to do that, to be able to reprogram funds back into it to continue the project.

Mr. Wicker. Well, okay. You have mentioned two projects where you say there are environmental concerns, and there have been environmental--official environmental inquiries raised by one agency or the other. But I am speaking in general, and if you need to answer this on the record, that is fine, but my understanding, Mr. Secretary, is that your level funding and the fact that you intend to concentrate on the main river stem, would not allow for any new construction starts, even on items that are planned, designed and scheduled and are ongoing.

Dr. Westphal. I would like to----

Mr. Wicker. And also, if you could, I would like for you to quantify on the record what would be the cost to the Corps of terminating actions that are already ongoing throughout the entire Mississippi River tributaries.

Dr. Westphal. Okay.

Mr. Wicker. Can you do that for me?

Dr. Westphal. I could do that if you let me get the broader answer for the record.

Mr. Wicker. Okay.

[The information follows:]

COST OF TERMINATING MR&T ACTIONS

The only MR&T construction actions underway that we would expect to terminate under the FY 2001 Budget request are in the Yazoo Basin Demonstration Erosion Control program. The Administration believes this program has fulfilled its purpose and should be discontinued. Any further streambank erosion control projects should be a local responsibility. We have not developed an estimate of the costs of terminating these contracts. However, the long-term savings to Federal taxpayers of terminating this program would be considerable. Under the zero funding level that we have proposed, we would reprogram funds from within the MR&T account to cover the costs of

terminating any ongoing contracts.

With regard to the broader question, the FY 2001 budget for the MR&T program does not provide funding for new construction contract awards for the projects in the tributaries of the lower Mississippi River. The FY 2001 budget emphasizes other projects within the MR&T program, whose principal purpose is to provide flood protection along the Mississippi River main stem and in the Atchafalaya River basin. The allocation was reduced for work on those projects in the tributaries that primarily involve the drainage of wetlands to increase the production of surplus crops, particularly where lawsuits and continuing environmental studies have resulted in a hiatus on scheduled activities.

DEMONSTRATION EROSION CONTROL

Mr. Wicker. Now, do I have time for one other question, Mr. Chairman?

Mr. Packard. We are going to have a second round if you would like to remain, but if not, go right ahead.

Mr. Wicker. Actually, if you don't mind, I just have the one other question, and then I do have a veterans group to meet with.

Mr. Packard. Go ahead.

Mr. Wicker. Let me just say with regard, Mr. Secretary, to the demonstration erosion control project, which the budget contains no funds for. Last year the committee report was very complimentary of the Corps' work with regard to the demonstration erosion control project, mentioning the reduction of flood damages, decreased erosion and sediments, an improvement to the environment. And it mentioned that the additional funds that this subcommittee provided last year provided for a continued design, real estate acquisition, monitoring of completed work, and initiated the initiation of continuing projects. And I quote here, and then it says, ``The committee expects the administration to continue to request funds for this important project.''

Now, of course, the Corps is going to carry out the directives and the laws as passed by the Congress. I don't guess this Congress can expect the Corps to come back with funding requests. That might be expecting a little too much, so I appreciate that you don't have to come in and ask for this money again. But it does seem to me with that, in terms of realistic budgeting, Mr. Secretary, with that strong of a statement from the Subcommittee about the value of the program, and with that strong of a suggestion from the Subcommittee that we feel that finishing the program and the ongoing contracts is going to be necessary, that it would have been more realistic in your budgeting to come in and ask for that money since this Committee has spoken so firmly on it.

Dr. Westphal. Well, I have asked that, you know--in fact, I had a group of folks from Mississippi come in and visit me the other day and one of the things that I mentioned to them was that we really--while there are some real threats to many aspects of the MR&T from a variety of sources that overall the program has soundness to it. But we need to really refocus and spend some time working both with the Administration and

Congress and local folks on where this program is going in the future. I don't mind telling you, you know this, that some people see MR&T as a throw-back to the old days and they want to see some changes in it.

And maybe what we really need to do is to reassess where those changes are, where the priorities should be, funding is limited. It is limited both by us, as we put together a budget, it is limited by, you know, this Committee will have an allocation and a limit to what it can fund. So, where are the priorities? Are they in the tributaries? Are there, you know, sediment management studies and other things?

And I really believe we have got to have that dialogue. Otherwise, we are going to continually be in this, you know, back and forth, back and forth: We don't fund it; you put it in the budget, back and forth.

The reason I said I was happy that we came in with a \$309 million figure is because that is actually what you appropriated. It is more than we requested last year and we are sort of catching up to you. And where we could catch up to you on the dollars, we also need to catch up to you on the policy priorities.

Now, in this particular project you mention, the Administration's feeling has been that we are at that phase where this needs to become more of a local responsibility, not necessarily a Federal one. The Administration is also concerned that the program will continue on; that there is no end to this because there is a need out there and there other communities who would want to sign up to it, and, so, it is almost like a select committee that becomes a permanent committee, it just stays on.

And I think those are questions that we have to face. And if it is a good program and it does have value for local folks and it does have a Federal interest and it broadly helps the environment, I think we should talk to you about it and I think we should make some decisions so we can avert these kinds of situations.

Mr. Wicker. I appreciate that answer and this will be my final comment, Mr. Chairman. You know, it is more than just sediment. I mean you have to go look at what is happening to people's farms, to people's homes, to people's property and you have to realize that the problem, at least in many areas, where this program is taking place, was caused by the Federal Government. The Federal Government came in initially, built a watershed lake and then channeled in an incorrect manner the river running into the watershed lake. And it was inevitable that it would fill up and that more and more each year the land above the lake is flooding. It is threatening towns, it is threatening the biggest town in one of the my counties and it is a mistake that the Government made. And I just can't see how we can abandon these people, and I don't think this Subcommittee and this Congress is going to. I do look forward to having the conversation that you mentioned and I appreciate the indulgence of the Chairman and the Subcommittee.

Mr. Packard. Thank you.

Dr. Westphal.

Dr. Westphal. A quick follow-up. I think, you know, General Anderson and his folks are doing a terrific job of trying to

deal with the other Federal agencies, maintain a dialogue with them, trying to address the environmental constraints that they perceive are part of these projects. And the Corps is not insensitive to those issues. The Corps, I mention in my statement, is the biggest environmental restoration agency in the Government.

And I think we are trying very hard and we do need some cooperation from time to time from the other Federal agencies and I know I, within the Administration, I try hard to get them to the table. But I have to say that the Division and the District of Vicksburg, Colonel Kreger and others, are working very hard to get us to a point where we can have that dialogue and we need to have that dialogue with you, with the members of this Committee and the delegations from the region.

Mr. Packard. Thank you.

COLUMBIA RIVER FISH MITIGATION

That completes the first round of questioning. And before we go to the second round we have been requested by Congressman George Nethercutt, who is a member of the full Appropriations Committee but not a member of this Subcommittee, if he could ask some questions and, so, we will yield to him for those questions.

Mr. Nethercutt. Thank you, Mr. Chairman, and, thanks to the members of the Subcommittee for allowing me to join today for a few minutes to talk with all of you--welcome, to all of you--on an issue that really affects the Western States, primarily the Pacific Northwest, as it relates to fish mitigation efforts.

As you know, this Subcommittee is scored against its allocation for appropriations the Columbia River fish mitigation costs. Those costs are mostly repaid to the Treasury by the Bonneville Power Administration. And, so, it is an important issue and I assume this Subcommittee wants to be very clear that it is doing some good. It, meaning the Columbia River fish mitigation efforts and funding.

I wonder if you or General Strock or whoever wants to address this issue could, in a brief fashion, advise what benefits we have had flow to the fish mitigation efforts by the way of funding from this Subcommittee?

Then I want to talk about the process you are engaged in, quickly after that, with respect to the study that is ongoing by the Corps on the issue of dam removal on the Lower Snake River.

Dr. Westphal. Okay. Well, actually General Strock and I have been engaged on Northwest salmon fish mitigation, dams and everything else for, well, since he has been in command and since I have been in this job. So, on the mitigation issue, I think that we have had some real success there. But I think that you can get more specifics to it.

Mr. Nethercutt. Maybe focus, General, on the new turbines that are being developed that we think have some potential to save fish?

Mr. Packard. Again, for the record, General, if you would state your name and position?

General Strock. Yes, sir. I am Brigadier General Carl Strock and I command the Northwestern Division of the United

States Army Corps of Engineers. I sure thank you for presenting me the opportunity to comment on this. What I would like to do is, for the record, submit a more detailed assessment with some more facts and figures for you.

[The information follows:]

NORTHWEST SALMON FISH MITIGATION

National Marine Fisheries Service' (NMFS) Biological Opinions on hydropower operations for salmon and steelhead identified many near-term actions for the Corps, and a long-term plan to evaluate alternative ways to operate and configure the dams. Near-term actions have included increased flow augmentation and spill for juvenile fish; continued juvenile fish transportation; improvements to adult and juvenile fish passage systems; adjusted powerhouse operations; additional spillway flow deflectors at the dams; and construction of additional research and monitoring facilities.

These actions have been successful in improving juvenile fish survival at the dams. Recent NMFS research on spring/summer chinook indicates that between 50 and 60 percent of juvenile fish that migrate in-river successfully pass the Corps dams on the lower Snake and Columbia Rivers, up from about 10 to 40 percent in the 1960s and 1970s. About 50 to 60 percent of migrating juvenile fish are collected and transported past the dams in barges or trucks. Approximately 98 percent of the transported fish survive to the release point below Bonneville Dam. Therefore, the combined survival of transported juvenile fish and in-river migrants through the Corps dams is about 70 to 80 percent.

Regarding turbine passage studies, the Corps has been involved in a comprehensive program to investigate improving fish passage through turbines since the early 1990s. The investigation consists of both biological and engineering studies.

From November 1999 to January 2000, tests were conducted at Bonneville Powerhouse I to compare results in Unit 5, a conventional unit, and unit 6, a Minimum Gap Runner (MGR) unit. Our initial analyses of the test results verify that the MGR turbine is safer for fish. Injury rates were low for both the conventional and MGR units, but the MGR had about half the injury rate of the conventional turbine, plus a better survival rate. Survival rates for fish released at the turbine hub from both the MGR and the conventional turbine was 97 to 100 percent; for mid-blade releases from 95 to 97 percent. Survival rates for fish released from the blade tip of the MGR were about 94 to 97.5 percent compared with survival rates of about 91 to 95.5 percent with the conventional turbine. An added benefit of the MGR turbine appears to be improved operating unit efficiency. This improved efficiency could partially compensate for lost generation due to spill.

The study results are still undergoing detailed statistical analyses and, therefore, initial observations should be considered preliminary and subject to further interpretation. It should also be noted that this study evaluated direct mortality and injury caused by passage through the turbine units and did not evaluate delayed effects in the trailrace (below the dam).

RESULTS ON FISH POPULATIONS

General Strock. But I can tell you that we are seeing tremendous positive results on the fish populations as a result of this. We are not the biologists. The National Marine

Fisheries Service and the Fish and Wildlife Service are the biologists where anadromous and resident fish are concerned, respectively. But they are telling us that had it not been for the mitigation project the stocks would be in far worse shape than they are now.

In the 1970s, we were seeing survival rates for the out-migrating salmon to be in the 40-to-60 percent area. Now, we are seeing survival rates in 70-to-80 percent. In fact, where the Lower Snake is concerned, we are really seeing pre-dam levels of survival through the system in accordance with the National Marine Fisheries Service. So, we are encouraged by that.

Specifically where the new turbine designs that we are testing down at the Bonneville Dam are concerned, we are seeing positive results. While they are somewhat preliminary, we are very encouraged. We are seeing three or four percentage points of survivability, and that is fairly significant, that puts us up in the 94-to-95 percent survival through the turbine. We have also learned some additional things through this testing on how to improve the configuration.

The new turbines, they are called minimum gap runners, do less damage to the fish and we are also seeing injury rates reduced as well, so, we are encouraged by that. In fact, to the point that we have made the decision to go ahead and install those turbines throughout Powerhouse No. 1.

One additional benefit we have seen is that not only are they more fish-friendly, but they also are more efficient and we are getting more power output for the same amount of water through the system.

So, we are very encouraged and we will continue to work with that.

LOWER SNAKE RIVER DAMS

Mr. Nethercutt. I appreciate that. Let me turn to, I guess, a less pleasant subject. And that is the hearing process, the meeting process that has been ongoing in our region. I believe it was 13 hearings and meetings that have been held thus far to take public opinion with respect to what should be done in connection with additional scientific information that the Corps might need to make a judgment about whether these dams on the Lower Snake River should be breached.

You all know my view on this. You and I had a discussion a few weeks ago and a very good discussion, General, I appreciate that. Greg Graham, manager of the Corps study, was quoted in February as saying that his agency, the Corps, was not trying to find out whether breaching dams is popular, instead, he said, the agency wants to know whether it failed to consider important information. This is not a vote, he was quoted as saying. I assume that quote was accurate.

Then, sir, in March you were quoted in ``The Oregonian.'' This first quote was in ``The Oregonian'' and the second quote was in ``The Oregonian'' by you, General, saying if there is discretion between one thing or another, the receptivity of the population is going to be a component in our decision. The number of people who stepped up before a microphone may not truly represent the feelings of the region. The press is

replete with indications of stacking the deck with respect to opponents of maintaining these dams on this river system, and then, you know, having the sense that the purpose of the hearing was to gather additional scientific information.

When I read your quote, General, I about fell off my chair because it seemed then that there is going to be some indication of whether this is a popular decision or not, versus whether there is additional scientific information.

My constituents, by the scores, have been frustrated by their inability to step up to a microphone and say this is what we feel about dam breaching and, give the additional scientific information they are trying to present. But instead they were, you know, apparently bussing people in. With all due respect, environmental community is bussing people in, signing up 17 at a time, and having 17 people to one--you know, proponents of dam breaching to one opponent. And then to get the sense that maybe the weight of the testimony is going to have some impact on you as opposed to looking at the scientific information that comes through these hearings is astounding.

Please, tell me it isn't so.

General Strock. It isn't so. [Laughter.]

Mr. Nethercutt. I appreciate it, because that really is a critical element of these hearings, that they be fair.

That you take into account information. But there is a growing and continuing sense in the region, people who literally live in the Fifth Congressional District and elsewhere in the State, that it is not a fair process and that they are being out-shouted and, therefore, they are fearful that the weight of that shouting on the one side will outweigh sensible scientific determination.

So, I am delighted if that is the testimony and if that is the approach of the Corps--that you will look at science and not look at the weight of testimony as it relates to popular opinion and this isn't a poll that we are taking out there.

General Strock. No, sir. The remarks that appeared in ``The Oregonian'' last week came from about a 20-minute discussion I had with that particular reporter. Many of the things that we covered were the same things covered by the Spokane paper and it came out in a completely different presentation. As the media is wont to do, they will take things out of context.

I prefaced the remarks I made with the same remarks I made that Greg Graham shared that it is not a referendum, it is not a vote, we did not keep score. But the reporter wanted to know that in general, of those who testified publicly, what was the prevailing opinion and that was the result of that.

We are going to base this on science as delivered by the resource agencies and on the economic impacts. We also are considering Treaty obligations, legal implications, cultural and social impacts. So, we are following an established process and I have got full confidence we will do the right thing here.

Mr. Nethercutt. Well, I hope so because it has the potential to destroy the West and destroy the Eastern Washington and the Pacific Northwest in terms of the economies of that region, agricultural use, water use, transportation, and it is critically important. Mr. Chairman, I thank you for the time and the Committee's indulgence in my questions.

Mr. Packard. May I just proceed a little bit further on

this issue of the Columbia River Fish Mitigation Program?

General Strock. Yes, sir.

Mr. Packard. Would you provide, for the record, the detailed breakdown of how the funds that we provided in the budget year 2000, how they intend to be expended?

General Strock. Yes, sir, we certainly will.

Mr. Packard. In detail.

General Strock. Yes, sir.

[The information follows:]

MITIGATION ANALYSIS

Mr. Packard. The largest single item included in the budget request for the Columbia Fish Mitigation Program is the continuing mitigation analysis and you have requested \$40 million for that. By the end of the fiscal year 2000, how much will have been spent on mitigation analysis and what is the total estimated cost of the activity, and when will it be completed?

General Strock. Sir, the \$40 million figure, I believe, is for the '01 budget request. I will have to get, for the record, the specifics of where we are in 00. I think we expect to fully execute that program because the appropriation for last year was actually cut significantly from what we requested. So, I don't anticipate any problems but we will provide that for the record.

[The information follows:]

COLUMBIA RIVER FISH MITIGATION

By the end of FY 2000 we estimate expenditures for Mitigation Analysis sub-project of the Columbia River Fish Mitigation project to be approximately \$257,389,000. The total amount programmed for mitigation analysis is \$442,500,000. The Mitigation Analysis sub-project is expected to be completed by 2006. The schedule will depend heavily upon the measures contained in the National Marine Fisheries Service Biological Opinion for operation and configuration of the Columbia River Power System.

The project cost estimate of \$1,386,000,000 for the Columbia River Fish Mitigation program was based on the National Marine Fisheries Service 1995 Biological Opinion. Costs and schedules for the long-term configuration measures not specifically prescribed in the 1995 Biological Opinion assume an aggressive non-breach plan to ensure a seamless funding stream. The program costs and schedule will be revised as needed to reflect the new Biological Opinion.

TOTAL COST

Mr. Packard. Now, you show a total estimated cost of \$1.3 billion, approximately, a little over that.

General Strock. Yes, sir.

Mr. Packard. What is the basis of that estimate?

General Strock. Well, it is just our assessment of what it

is going to take to do the analysis.

Mr. Packard. Does that include breaching the dams?

General Strock. No, sir, it does not. It includes studies of breaching but as Mr. Nethercutt pointed out, BPA will reimburse about \$1.2 billion of that total amount from ratepayers, not taxpayers.

Mr. Packard. I don't have any further questions.

Thank you very much.

General Strock. Thank you, sir.

Mr. Packard. We will move to the second round of questions now and Mr. Visclosky?

Mr. Visclosky. Thank you, Mr. Chairman.

General Ballard, first of all, I would want to echo the comments and best wishes of my colleagues on your retirement and do wish you well. I am very proud and happy with the service you have provided to the country. I think you have done a great job.

General Ballard. Thank you very much, sir.

NATIONWIDE PERMIT 26

Mr. Visclosky. The Committee has prepared a series of questions on the Permit 26 issue. There was a controversy about that last year. If I could ask a general question, what was the policy that led to the change in the permitting?

Dr. Westphal. There wasn't a policy, it was actually a litigation. We were sued. The feeling was that we were basically not doing a good job of protecting wetlands and headwaters and critical waters in the flood plain. And, as a result of the discussions based on that lawsuit, the negotiations on the lawsuit, the decision was made to basically replace nationwide Permit 26 with a set of activity-based permits, nationwide permits, which is what we did over the course of a couple of years now.

Mr. Visclosky. Would any of you on the panel want to describe the problem we have had as far as the loss of wetlands in the United States?

Dr. Westphal. Well, you know, it is one of the hardest things to try and tabulate. We all continue to ask for data on this to know how much we are losing, how much we are gaining. I think the Corps has done a very good job in its permit and regulatory program of maintaining fairly rigorous requirements for mitigation in our program but, overall, the biggest losses of wetlands really I think are coming today as a result not so much of filling of wetlands but rather of draining of wetlands.

And you are seeing some particularly major efforts in this area happening in the Northeast and to some extent in the Southeast. This is not regulated by the Clean Water Act and you have undoubtedly heard of the Tellac rule. The Tellac rule was developed--actually the name Tellac comes from a district engineer in Wilmington; is that right--who, as he was seeing critical wetland areas drained, simply by putting in a canal and letting the water run out and then saying, we don't have a wetland any more, filling it in and developing it. As they were doing that, of course, under Tellac, you dig that ditch and you can't help but throw material to the side. It spills over. And that can then be considered to be regulated under 404 of the

Clean Water Act.

Mr. Visclosky. Mr. Secretary, you had mentioned that the Permit 26 came under review and changed because of litigation. A rule was issued on March 9th. Are you in litigation again now on the issue?

Dr. Westphal. No. We issued on March 9 a final rule on, I think it was March 9th, I can't remember the date. But if you are referring to the rule, the final rule on----

Mr. Visclosky. The final rule is in place on March 9th.

Dr. Westphal. Yes.

Mr. Visclosky. Has litigation been filed, perhaps is the question I should ask?

Dr. Westphal. I don't know of any.

Mr. Andersen. Congressman, for the record, my name is Robert Andersen, I am the Chief Counsel for the Army Corps of Engineers, and we don't have any pending litigation on the final rules but there are some Federal District Court litigations that involve other nationwide permits, other than 26, that are still ongoing.

Mr. Visclosky. No one has filed a motion in any Federal Court to restrain you from implementing the rule?

Dr. Westphal. Let me get you an answer for the record.

[The information follows:]

NATIONWIDE PERMIT 26

On February 28, 2000, the National Association of Home Builders filed suit in the United States District Court for the District of Columbia seeking judicial review of Corps Nationwide Permit 29 which authorizes small fills for single family housing construction. On March 9, 2000 Nationwide Permit 26 replacement permits were published in the Federal Register. On March 16, 2000, the National Stone Association filed suit against the new Nationwide Permits. In addition, on March 28, 2000, the National Association of Home Builders amended the complaint in their February 28, 2000 lawsuit to add counts challenging the Nationwide 26 replacement permits.

NATIONWIDE PERMIT 26

Dr. Westphal. It may be that the home builders had threatened to do that and maybe they have followed through.

Mr. Visclosky. But have not?

Dr. Westphal. Maybe they have and I just don't know about it today.

Mr. Visclosky. Okay. Thank you, Mr. Chairman.

Mr. Packard. Well, it is interesting, Mr. Visclosky, that you brought that up because you and I have a little bit different points of view on that as was evident last year and I had many, many questions that I wanted to bring up on the nationwide permit and its replacements.

Would you, for our refreshment, explain the differences between the previous nationwide 26 process and the current proposal?

Dr. Westphal. I would like to give you a full answer for the record with more explanation and not take up a lot of your time today.

[The information follows:]

NATIONWIDE PERMIT 26

Nationwide Permit 26, which authorizes discharges of dredged or fill material into headwaters and isolated waters with a maximum acreage limit of 3 acres, is being replaced by activity-specific Nationwide Permits (NWP), most of which have a $\frac{1}{2}$ acre limit and general conditions that provide more protection for the aquatic environment. The expiring NWP 26 required notification to the Corps for activities that fill greater than $\frac{1}{3}$ acre of headwaters and isolated waters, whereas the new NWPs require notification to the Corps for activities that fill greater than $\frac{1}{10}$ acre of non-tidal waters. The new NWPs are not restricted to headwaters and isolated waters. In general, the replacement NWPs authorize activities in all non-tidal waters, except for non-tidal wetlands that are adjacent to tidal waters.

NATIONWIDE PERMIT 26

Dr. Westphal. But basically what we did is we went through a series of activity-based permits. We reduced the acreage limitation on most of these. The idea was that we wanted to-- first of all, the Administration has been very, very adamant about encouraging people not to build in flood plains. And James Lee Witt has taken a leadership position on this and he has outlined the costs to the taxpayer of rescuing people from floods and so on. And, so, part of the idea here was to essentially eliminate the use of nationwide permits in the flood plain. That doesn't mean that you can't build in the flood plain, it means that to build in the flood plain you have to go seek an individual permit.

The other aspect was, what do you do in the head waters, what do you do where you go, say, to areas where the flows are say below 5 CFS? And at that point, you allow development on the fringes through the nationwide permit but you prohibit any development using nationwide permits in the major flood plain area there.

The gist of all of this is that you are really making it harder for people to build in flood plains. And you are making it harder by requiring them in most cases to go forward to seek an individual permit.

Mr. Packard. There are studies and some reports that indicate that we have actually increased the amount of wetlands over the last few years by virtue of your mitigation program, which has been rather stringent, often much more than one-on-one. What is your perception of that whole question: Are we depleting or are we increasing wetlands?

Dr. Westphal. Well, I think we are increasing the protection of wetlands for those areas that we are able to regulate. What concerns me, personally, is what we are not able to capture by virtue of not being able to regulate. That is what I was mentioning before which is the draining of wetlands, which is occurring at a very rapid pace everywhere.

I have suggested to the Administration and through my colleagues in the Administration that we need to deal with that

in earnest with the Congress. That is a matter that we have to put into the hands of the Congress to work with in another reauthorization of the Clean Water Act.

It is a tough issue and it will be difficult for Congress to deal with it, but I think that is where it belongs. I have resisted efforts to try to find other ways to regulate because I think it is a matter that we have to settle as a nation and I think this is the forum where it needs to be settled.

Mr. Packard. Dr. Westphal, in last year's bill, the FY 2000 Energy and Water Development Appropriation Act, you were directed to prepare a report for Congress on the replacement permit costs and, that was certainly a controversial issue, but it was included in the law. And on February 17th, I wrote you a letter and asked that you withhold publication of the final rule on the replacement permits until Congress had an opportunity to review that report that you were directed to prepare.

Now, obviously, you have gone ahead and published your final report but I have not received that requested report on the rule. The preamble of the Corps' March 9th, 2000, publication of the final rule cites conclusions of the study and it says that it was finalized in January 2000 and it is available on the Corps' regulatory home page. We have not been able to find that, incidentally. We simply have not been able to locate it on your website.

And, so, we have not seen that report, and, yet, it has been published. And then, furthermore, on March 14th, the Corps said it was still reviewing the study and it remains unavailable. The Committee is deeply concerned over the inconsistencies of those statements and why the study supposedly was completed back in January and relied upon in its final rulemaking but is still ``under review'' and unavailable to the Congress and the public, the American public. When will that study be available?

Dr. Westphal. Mr. Chairman, the study is today with OMB and we did receive it from the Corps. We forwarded it to OMB. They were doing some assessment of one part of the report on essentially what would be the cost to the public as a result of this new rule. I have no knowledge of the Corps putting it on its web page or proposing to do that. I don't believe that they---

Mr. Packard. Well, why did we not get a copy of that report before the rule was published?

Dr. Westphal. I am not sure, Mr. Chairman, I can answer that question. I know that we were on a schedule on the rule, we have to get it in within a certain period of time. I don't know if that was a legal requirement. I think I would have to get you an answer on that. I am not sure why that was the case.

[The information follows:]

Although the study was completed in January 2000, in accordance with longstanding Executive Branch coordination policy, the Office of Management and Budget is reviewing the study and must complete its review before it is transmitted to Congress and made available to the general public. This is common practice regarding reports submitted to Congress by an executive branch agency. My staff also is reviewing the study. When the study is cleared by OMB, I will submit it to the

Congress and, it will be available on the Corps headquarters regulatory home page.

COST OF NEW RULE

Mr. Packard. When a letter was sent in February requesting that the rule not be published until we had a copy of that report, it is frustrating and upsetting that that was not ordered.

You brought up the fact that there are delays and increased costs and it has been discussed that you have requested \$6 million in additional funding that would be required to maintain the current permit processing time schedule. I think the report will certainly show or should--and I think there are illusions to that fact in your testimony--that the report will show that there is a considerable amount of increased workload on the Corps to implement the new regulations and that it will cost significantly more money; \$6 million has been the figure that has been requested.

How can you justify a policy change that will double the processing time, because that is taken right from your own testimony, that will double the processing time and increase the cost \$6 million?

How can you justify that kind of a policy change?

Dr. Westphal. Well, I think in this case we are justifying it on two points. One is that we absolutely need to protect these critical waters and headwaters and we need to make sure that we also, in the long term, save a good deal of the taxpayer's money by not making it too easy to build on flood plains, where we are constantly having to rescue people from it.

The other factor is that we believe that this rule, while it is going to cost the public more because they are going to, in some cases, have to file an individual permit, while it is going to be costlier to the Corps to manage the process, we estimate \$6 million a year in additional costs, that in the long term, the savings of the protection of wetlands and the long-term costs to the taxpayer from flooding will more than make up those costs.

Mr. Packard. It is hard to visualize that a request on a half acre parcel of land is going to have any major impacts by wetlands by the removal. What analysis has the Corps conducted to determine the half acre? Is that an arbitrary figure that was just kicked out or was there some scientific reason to go from three acres to a half an acre?

Dr. Westphal. I don't know. I wasn't involved in the details of how that was worked out. I don't know that I could say whether it was based on some scientific formula or simply a lot of examination of previous impacts. I would be glad to get you that.

Mr. Packard. How does the Corps define minimal impacts?

And that's in quotes. In the regs it refers to minimal impacts; how do you define that?

Dr. Westphal. I'm not sure I know the answer to that.

General Van Winkle. Mr. Chairman, let me answer a little bit. We went back, essentially, and took a look at all the historical permits we have given and broken those out into

various acreages. And then we went back in and looked at various acreage percentages and how that would impact. And, so, as we selected the half acre as a standard they gave us a certain percentage that would change from the 3-acre requirement to the half an acre.

There is a lot of discussion and negotiations among Federal agencies to determine that number. It was finally determined that number would still allow generalized permits, the nationwide permits under the different rules at the half acre point and then bring us into the individual permit.

It was also felt that with a half an acre standard that individual, people who request permits then would have some leeway as they made adjustments and it was felt that there was a tradeoff in the balance there. And, so, again it was based on an analysis for a total workload, what our total permits have been in the past to determine that acreage.

Mr. Packard. Many of our residential requests are on half an acre lots, or larger, throughout the country. And this will have a major impact upon just the processing to build a home, just a routine home. I think the concern that I have through all of this, and it certainly was expressed last year in our debate on this issue, is the delays that will take place. We are probably not going to have any more than level funding and maybe even water projects and the water portion of our bill, this Committee's bill, will probably suffer more than the military portion of our bill and the energy portion of our bill.

That being the case, and we may--we, at best can expect maybe level funding from last year--and if we increase the defense budget like I think the President and the Congress wants to do that will include some defense issues in our bill. And that means that if it is level funding and we increase the defense portion of our bill then we will have to take that out of the water portion of our bill, which I guess is a long way of trying to say that we probably will have less funds than last year for water in the bill, which means probably that we will not get the \$4-point, shortly over 4-point billion dollars for water.

If we cannot fund even at last year's level on water issues in the bill, how will that affect not having sufficient money to implement this and still keep pace? What will suffer?

Dr. Westphal. Well, it will be a pretty dramatic effect on us. I believe that our regulatory program is--I, personally, believe it is under-funded, has been under-funded.

Mr. Packard. I do, too.

But I am telling you the realities.

Dr. Westphal. No, I understand. So, I think it will have a pretty significant impact.

Mr. Packard. And it will delay--the only thing you can do is delay the timing, the schedule?

Dr. Westphal. Yes.

Mr. Packard. So, there could be actually much more of an impact without sufficient funds to implement the regs. It could actually delay much further than what you have already indicated. The doubling of the time schedule to approve the permitting process was based on the fact that you would have the increased funds. If you haven't any increased funds, that

could even be delayed more; is that correct?

Dr. Westphal. Mr. Chairman, we didn't ask for additional funds for this purpose because when we put the budget, we didn't have the rule, we didn't have the analysis, we didn't know what it would cost. So, the budget request that you have from the President is sort of pre-the-rule. It doesn't assume the additional \$6 million in costs that we're going to essentially have to eat that cost if you were to fund us at the level we requested for this first year.

So, I think if you cut us even more, of course, that even makes it more dramatic.

Mr. Packard. That is what I understand. And that is of concern because we obviously have spent a lot of time talking, both in my office in personal meetings with you, each of you, and in Committee hearings and Committee meetings, we have discussed how to streamline the process and increase the application process in terms of time schedule or to improve it at least.

Dr. Westphal. Right.

Now, Mr. Chairman, remember this is just the replacements for nationwide 26.

Mr. Packard. I understand.

Dr. Westphal. We have 40-some-odd nationwide permits that are, you know, still---

Mr. Packard. But if you are required to process significantly more nationwide, what were nationwide 26 applications, and you have no more money to do it, it is going to take longer to do that, but that is also going to eat up time that would be used in processing other applications.

In other words, it will have a ripple effect, it has to have a ripple effect, you can't avoid it unless you increase the expenditures and increase your personnel. That is the only way that you can avoid, I think, delay throughout the whole system of applicants.

And that is of concern because that I think most of your Division leaders recognize that the greatest amount of complaints that we get--and it is not just from big developers, quote, big, rich developers in the minds of some--it is from cities and school districts and water districts and every public agency that wants to build a facility to improve their service to their people.

And I come out of local government, so I know that feeling and that concern. You can't build a highway or a road in a community these days without long delays and often serious increases in cost. And that is felt at the local government level and that is of great concern to me because, again, that affects people's quality of life when you can't build a school or when you can't build a water system or you can't put in a flood control system or you can't put in a road for the city. If you can't do that then that compromises quality of life for the people on the local level and that is my biggest concern.

So, I am going to continue to harp on the whole question of trying to make the application process simpler, streamlined and, yet, still address the environmental issues. But it is a huge economic issue now to those at the public level, mostly at local government, in terms of providing facilities for their people on a cost effective basis. Because if you delay four

years or two years or even one year, an interchange in your community, you can increase the cost to the local taxpayers significantly, in just that delay alone.

So, that is my concern and I am going to--there just has to be a balance between environmental concerns and economic concerns and being able to provide a quality of life to the people that the mayors and the city council and the school board, water district representatives are expected to provide.

Dr. Westphal. Right.

Mr. Packard. I have given you my speech.

ADMINISTRATIVE APPEALS

Dr. Westphal. Mr. Chairman, greatly at your urging, too, I signed recently a new rule, it went to the Federal Register just maybe a week-and-a-half ago, two weeks ago, on the jurisdictional appeals. Last year we----

Mr. Packard. That is my next question, I was going to ask you to just give us a report on the implementation of that.

Dr. Westphal. Okay.

Mr. Packard. Because I understand it is going well.

Dr. Westphal. Yes. And, so, we have got the denial appeal rule in place and we now have got the rule on the jurisdictional appeal. And they will come together in a way that I think will really expedite the ability of the applicant to get a decision, to get his or her either a denial of a permit or where the Corps--you know, when a permittee comes in and says, I want to develop acreage and the Corps says, well, we believe that that may be a wetland area, and they go out and they do the site visits and they look at it and if there is disagreement as to what it is then there is pretty much a 90-day period of time of an appeal where a decision has to come forward and it is elevated to the Division. The Division comes in and looks at it and makes the final determination.

So, we think we are going to expedite that process and make it easier for people to get their appeals through.

Mr. Packard. I yield time to Mr. Visclosky.

Mr. Visclosky. Mr. Chairman, thank you very much.

As long as we are on permit 26, before we move on, just a statement and a question or two. It is my understanding that the report required in the legislation of last year was not a legal requirement, as far as providing it to the Committee. But I would state, as a member of the Subcommittee, as a member of the full Appropriations Committee, that the Chairman did write on February 17th, and it is my understanding that he has, as of today, March 28th, not received a response. And I think as a courtesy to the Chair and to every member of this Subcommittee if you simply wrote and said, we are not going to give it to you because we are not legally obligated to give it to you, I do think that letter should have been forthcoming to the Chairman.

Dr. Westphal. Well, it is not our intention not to give it to him.

Mr. Visclosky. I understand that----

Dr. Westphal. Absolutely not our intent.

Mr. Visclosky [continuing]. But if nothing else, after 31 days, if my math is correct, in our office if we can't answer a

letter within 10 days we send a letter out saying we can't answer your letter in 10 days and we will get back to you. So, I do think that they should response.

Dr. Westphal. Whoever missed that, I apologize for that.

Mr. Visclosky. The second point I would raise is, while the Chairman and I have had a disagreement, there is no question about it, on the issue, we are not entirely in disagreement on the issue. And I certainly wouldn't disagree that every effort should be made to balance the protection of wetlands in the United States of America with trying to mitigate the economic costs, both to the Federal taxpayers in terms of the Corps' budget as well as to the contract community. I don't disagree with the Chairman on that.

It is my understanding if--and I appreciate what the Chairman is saying about our budget--if you had \$6 million for this program there would be no additional delay for this particular set of permits.

Dr. Westphal. Right.

Mr. Visclosky. Okay. If you don't get the \$6 million, to put it in perspective, what is the average number of days for a permit to be approved or denied now?

Dr. Westphal. Well, what we are talking about here in terms of costs is the need now to go from the issuance of a general permit to an individual permit. And those will vary in the amount of time that they will take. They could take as long as a year, they could take a lot less than that.

Mr. Visclosky. But during the debate last year, there was an average number of days----

Dr. Westphal. There is and I----

Mr. Visclosky [continuing]. We used in the debate and there was no controversy about the number of days. You could either be upset or not upset, but there were a number of days. Just to put a doubling of that in perspective, I would like to know what that is for----

Dr. Westphal. General Van Winkle.

General Van Winkle. Mr. Visclosky, let me answer the question. In general our individual permits are taking on the order of three to four months. I can get you that, we track this pretty closely, I don't have the number at hand. It is on the order of three to four months at this point.

Mr. Visclosky. And the final question I would have is as far as the period of time that the contractors, developers, home builders, property owners, public entities wait for this, that is, I assume, concurrent with other permitting, licensing, zoning changes, what have you, that go into decisions and implementation of a construction and development scheme. This is not consecutive, that nothing else happens during this period of time while people wait on the Army Corps of Engineers and the Federal Government.

Dr. Westphal. Right.

Mr. Visclosky. Thank you, Mr. Chairman.

Mr. Packard. Well, and that was my concern, one of my concerns is, isn't there a way that we can review the processing from one agency to another to see if there couldn't be some concurrence in the way that the process is done. Four months in one agency, but there are six other agencies or so that they have to go through, considering the local, county,

the State and now, the Federal. You have got literally a plethora of agencies that have to give their approval. And when each one takes four months, then you can see you are talking about four or five years in many instances before a major application is approved finally and they can move forward.

That is too long. That is simply too long. And some of us just can't feel that that ought to remain that way. Why can't we do some of it concurrently with Fish and Wildlife and EPA and some of the other Federal agencies at least. Have you even thought of discussing this with them?

Dr. Westphal. I believe it is concurrent with the others.

Mr. Packard. Well, it doesn't work out that way.

Dr. Westphal. We should do more to----

Mr. Packard. Because many of them say, well, we are waiting on the Army Corps to get their final 404, whatever permits are required, before we can really start. And, so, it isn't concurrent in most instances. There has got to be a better way, and I would love to be in your place, Mr. Secretary. I would find a better way to get this thing processed a lot quicker than three, four years for most applications. And for a person that wants to build on a half an acre site for a home that could be in a flood plain, that is too long, and it increases the cost significantly. Now, I don't know that a home would fall into that category, but the point has been made, and I do not want to prolong it.

Mr. Edwards.

FORMERLY USED SITES REMEDIAL ACTION PROGRAM

Mr. Edwards. Thank you, Mr. Chairman. Mr. Secretary, I would like to, for a few minutes, shift gears to go to the issue of disposal of radioactive waste, especially after some of the situations we have seen in Paducah, Kentucky, and other parts of the country. It is an issue I think we all in Congress need to focus on more specifically.

I would like to ask you about the FUSRAP Program and materials, for the record, the Formerly Utilized Sites Remedial Action Program. Now, this subcommittee supported transfer of oversight of this program from Department of Energy to the Corps of Engineers. I am not sure that many members are aware that this might result in a policy change that no longer would these radioactive materials not have to be placed in NRC authorized sites. Can you tell me what the rationale is between differentiating between materials produced prior to 1978 and after 1978 and why the Corps has chosen not to require these materials be placed in NRC approved sites?

Dr. Westphal. Okay. Well, I am going to ask the Corps Chief Counsel to come up and actually talk to you about that. He has experience not only in the Corps, but with the Department of Energy, and I am sure it has to do with the level of radiation in the material and what is acceptable in a RCRA site versus a non-RCRA site, but let me let you address that.

Mr. Andersen. Again, for the record, it is Rob Andersen, the Chief Counsel for the Corps of Engineers.

Congressman, I think the key principle to keep in mind in this is that it is in accordance with law, and it is regulated under the Resource Conservation and Recovery Act. And I think

you are alluding to the Buttonwillow disposal of FUSRAP material?

Mr. Edwards. Yes.

Mr. Andersen. It is very important to remember that this material was decontaminated and decommissioned in New York, and the materials that ultimately were shipped to California, the site at Buttonwillow at the lowest cost, were materials well below 500 pico curies, and at that level, they don't constitute a serious risk to health and safety so long as they are disposed of in an adequate manner. And the contractor involved contacted the state agencies. We understand there is a disagreement about whether both agencies of the California Government cleared it, but the one that has the RCRA program delegated to them from EPA, cleared the capping and closure of the site after the materials were emplaced.

Mr. Edwards. What was the quantity of materials shipped?

Mr. Andersen. Well, it was a large----

Mr. Edwards. How many rail cars?

Mr. Andersen. I am glad you asked that. It was many, many rail cars and many, many tons, it would probably fill this room many times over. But to think of it accurately, you have to think about the amount of radioactivity there as very, very minute. Remember, this was broken up concrete and wood after the buildings had been decontaminated with just minor, minor residual materials that couldn't be removed in any other way. They are matrixed within the concrete and the wood, and at very low levels.

Mr. Edwards. So your argument--and I think we would all agree with your comment that if disposed of in an adequate manner, materials aren't a risk to human life. That is also true for high-level nuclear waste as well. The question, obviously, is what is an adequate manner?

One reason for this, you said, was because we are in accordance with the law. I understand some of the technicalities of that, but tell me the differentiation between radioactive material prior to 1978 and radioactive material after 1978? I am not a scientist, but I understand the half-life of radioactive material, certainly would make that distinction absolutely meaningless. Can you prove to this committee that all the material prior to 1978 is a much lower level radioactive nature than after 1978?

Mr. Andersen. No, Congressman. It is much more complicated than that, and I have written to the Nuclear Regulatory Commission to make sure that our interpretation of the law was correct, and I would be glad to submit that to you for the record, but I can try to clarify it a little bit.

[The information follows:]

Mr. Andersen. It is materials that were pre-enactment of the Uranium Mill Tailing Act, and supposedly--and this is supposedly, since I was with an organization that oversaw DOE for a few years called the Defense Nuclear Facilities Safety Board as their general counsel and then before this committee before--supposedly, they took the steps necessary in decommissioning and decontaminating those sites at the time to reduce those levels, and most of the materials were kept on

DOE-owned sites, and they are not subject to NRC regulations. I am talking about FUSRAP materials. And the ore and the mill tailings can be highly radioactive and they are treated in a much different way.

You should also note, Congressman, that the materials that require other type of disposal and treatment at that site in New York were handled in that manner, and were emplaced in a licensed NRC facility, the higher-level wastes.

Mr. Edwards. But in listening to your answer, you cannot say that there is a clear--always a clear distinction between the level of radioactivity in the pre-1978 material and the post-1978 material; is that correct?

Mr. Andersen. That is correct, that is correct, Congressman. And I think the purely legal approach to it would say we could say anything that is prior to the Act can be disposed of in a manner that is safe, but not necessarily in an NRC facility. That is the purely legal thing. But we have gone far beyond that, and as a matter of fact, the State of California has gone out and investigated the site and determined that in fact it is safe and has been properly disposed of under RCRA.

Mr. Edwards. But post-1978 materials you put in NRC licensed disposal facilities; is that correct?

Mr. Andersen. That is correct. All of the materials post 1978 and----

Mr. Edwards. All of the materials.

Mr. Andersen. And at a tremendous cost, because for health and safety purposes, it is not necessary to put them into a licensed facility, and it is several orders of magnitude more costly.

Mr. Edwards. I realize disposal of nuclear waste can be very expensive, as this committee knows, perhaps better than any subcommittee in the House, but perhaps I would like to ask you if you could follow up with a longer explanation of the difference in the--not the legalities, because if somebody is--or a community is put at risk because of radioactive material, they could care less what the law was at the time. The question is: does it make sense and do we need to have these standards for pre-1978 materials as well as post-1978 materials? I don't know who passed the law previously, but I am not going to be fully responsible for their judgment. I just think Congress has a special obligation. I think this has come home to me after seeing what I thought were some credible lapses at the Department of Energy, dealing with the Paducah, Kentucky case, the hearings we had--the Chairman had in this subcommittee in the last several days. I am just going to take an increased interest in how we are disposing of nuclear waste whether it is high-level or low-level. I think we need to be extremely careful. I would like a little further explanation if I could, about the safety and the level of radioactivity in the material pre-1978.

Mr. Andersen. We will provide that for the record.

And I just might note--and I don't mean to be flippant about this at all, that a single bottle of Merlot will contain several hundred pico curies of radioactivity in it, and so we are not even--the Department of Transportation, in terms of this residual material--that is what I prefer to refer to it

as--does not even classify it as radioactive material, and it just has to be shipped in proper cartons. So we are very conscious of the health and safety risks, and we will provide more information for the record for you.

[The information follows:]

SAFETY AND RADIOACTIVITY LEVELS OF FUSRAP MATERIALS

The Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) provided for regulation of the operation and cleanup of sites containing uranium mill tailings produced in an activity for which a Nuclear Regulatory Commission (NRC) license was in existence on, or issued after the date of enactment of the Act. UMTRCA also made cleanup at designated, unlicensed sites the responsibility of the Secretary of Energy, working in cooperation with the cognizant States. Even before the enactment of UMTRCA, however, it was apparent that there were sites that were not licensed by the NRC that required remediation. The Formerly Utilized Sites Remedial Action Program (FUSRAP) was developed by the Department of Energy (DOE) to address remediation at certain of those sites, which were contaminated as a result of the Nation's early Atomic Weapons Development Program. In 1997, responsibility for cleaning up the FUSRAP sites was transferred to the U.S. Army Corps of Engineers.

From the standpoint of radioisotopes, byproduct materials regulated by NRC and materials addressed under FUSRAP that are not regulated by the NRC are similar. However, there are differences which are significant. Those FUSRAP sites where ore was processed generally were cleaned up to the standards of the day when the processing was finished. Other FUSRAP sites resulted from storage or disposal of materials from this earlier decontamination. Although some areas of elevated concentrations do exist, much of the remaining contamination has a relatively low activity level. Over time, many FUSRAP materials have been further dispersed and commingled with soil and other materials.

The average concentrations of individual radionuclides in many FUSRAP waste streams range from just above background to hundreds of picocuries per gram (pCi/g). However, because there are areas of elevated concentrations, radionuclide concentrations in some waste streams may exceed several thousand pCi/g. The concentration of radionuclides that may be disposed of in a Resource Conservation and Recovery Act (RCRA) Subtitle C permitted facility will be limited by the acceptance criteria for that facility. These facilities generally accept for disposal only materials averaging less than 355 pCi/g natural uranium and 110 pCi/g natural thorium. For those FUSRAP sites where the RCA Subtitle C facility's acceptance criteria cannot be met, recycling or disposal at a NRC-licensed facility will be required.

The Corps believes that the FUSRAP materials should not all be sent to NRC regulated facilities because some of these materials can be safely disposed of in RCRA facilities. The Corps will continue to dispose of FUSRAP materials with higher activity levels in NRC or agreement state licensed disposal sites, since they are the only facilities which can accept higher activity materials, whether the materials themselves are NRC licensed or not. The Corps regards both NRC licensed and RCRA permitted disposal facilities as providing protection to workers and the communities around them from exposure to the hazardous substances, including radionuclides, that they are permitted or licensed to manage for disposal.

EXTENT OF RADIOACTIVITY

Mr. Edwards. I would appreciate that, because I realize one bottle of Merlot might not be too dangerous on a radioactive basis. 50 rail cars full might concern me a little bit more, and I appreciate your answer. I know it is a serious matter, and I look forward to hearing from you.

Thank you, Mr. Chairman.

Mr. Packard. Thank you, Mr. Edwards. Mr. Knollenberg.

Mr. Knollenberg. Thank you, Mr. Chairman. And the Merlot bothered me for a minute there. [Laughter.]

TWELVE TOWNS DRAIN PROJECT

I drink that stuff, in moderation, but I drink it.

I just want to talk about a parochial item here that goes to the heart of things in Michigan, and General Ballard, it might be your question. You may or may not be familiar with the Twelve Towns Drain Project in Oakland County, Michigan, but specifically it is a treatment facility that was constructed in 1972, and now it needs improvements, new inlet, a dewatering pump station, ventilation, computerization, and some other things. Now this project has been authorized--or funding for the project has been authorized under WRDA. There is currently no outlay for this in the budget proposal. There was funding in the 2000 budget to get just an initial bump up and going, and my simple question is--and you may have to search that out--but is there currently no outlay in the budget for this project?

General Ballard. There is currently no money in the 2001 budget.

Mr. Knollenberg. So that would be something that--there is no possibility of an early appropriation of dollars unless we do the appropriating here at this committee, apparently. There is nothing within your perspective that would indicate that you are going to proceed with any expenditure, doctor?

Dr. Westphal. Well, let me ask you to just let us review this, let the chief and I review this, and see what we can do in this fiscal year, if anything, based on what we are doing in 2000, and then get you a recommendation on that.

[The information follows:]

TWELVE TOWNS DRAIN, OAKLAND COUNTY, MICHIGAN

Section 219 of the Water Resources Development Act of 1992, as amended by section 504 of the Water Resources Development Act of 1996 and section 502 of the Water Resources Development Act of 1999, authorized \$20,000,000 in Federal funds for the Twelve Towns Drain Project. The non-Federal share is estimated at \$124,000,000. Federal funding was not provided for the project in FY 2000. Design is largely complete. Subject to the usual qualifications on capabilities, if funds were provided in FY 2001, \$250,000 could be used to review non-Federal design documents, prepare Federal contract plans and specifications, execute a construction cost sharing agreement, and award a contract.

DETROIT RIVER MASTER PLAN

Mr. Knollenberg. There is another, while we are doing this, and we can do this for the record, let me also include--there is a Detroit River Master Plan. It is called the Corridor Study, which includes a variety of projects. There are about five of them. And this is very critical to Detroit as a port. There is the Detroit River Master Plan. There is a Detroit Riverfront Seawall Improvements, Detroit River Navigation Improvement, Detroit River Environmental Dredging, and finally, the Detroit River Removal of Reef. Now, these are all programs. So I guess what I would like in your response is for you to give us an indication of how you view this project, whether it is favorable or what, and what potential might there be to start funding, starting this work in 2001.

Dr. Westphal. We will be glad to do that. In fact, we will expedite that and get you--we may come see you about that.

Mr. Knollenberg. All right, that is fine. I would appreciate that. Thank you, Mr. Secretary.

[The information follows:]

FUSRAP

Mr. Knollenberg. This next question is on FUSRAP, and, General, I think what we are after here is just, if you can, give us a status on the cleanup that FUSRAP is involved in and that the whole program is--what is the status today; what can we expect maybe--and also what we can expect from your indications of any future success?

General Ballard. Yes, sir. Since this program was transferred to us, it has probably been one of the most successful ones that we have undertaken, and it has been well funded by the Administration to the tune of about \$140 million per year. We took over, I think it was 121 sites from DOE. We are well ahead of schedule, and as long as the funding continues, we see no problem in completing this, and I am not really sure of the timeline of this project.

Mr. Knollenberg. But you are ahead of schedule.

General Ballard. We are ahead of schedule. We have not increased any manpower. We are doing it within current capability.

Mr. Knollenberg. I understand you have covered this question in some part already I believe, haven't you?

General Ballard. Yes, sir.

Mr. Knollenberg. I was out of the room at that time.

General Ballard. We were talking about the disposal, with Mr. Edwards, of some of the materials in non-NRC facilities.

Mr. Knollenberg. Okay. I think that kind of then takes care of the questions that I have on that.

There is a cost difference, I know, between the disposal in a RCRA landfill versus, let's say, an NRC licensed site. Do you have any idea of what the differential of that would be there?

General Ballard. It is significant. I don't know.

Mr. Andersen. Congressman, I am Rob Andersen, Chief Counsel for Corps of Engineers.

Mr. Knollenberg. Mr. Andersen.

Mr. Andersen. Had a chance to discuss with Congressman Edwards some of these issues. It can be orders of magnitude or more. In other words, twice, sometimes 10 times the cost. Part of the problem is we don't--and I know this committee knows this--we don't have sufficient disposal facilities for residue or even very low-level waste in the United States, and so there are very few commercial operators that are licensed to dispose of it, and if you have to dispose of it under an NRC licensed facility, the cost can be anywhere from 2 to 10 times or greater.

Mr. Knollenberg. I think that was expected. I don't think I have any more questions, Mr. Chairman, so I am going to relinquish to you, and thank you.

Mr. Packard. Thank you, Mr. Knollenberg. We will complete this cycle with Mr. Frelinghuysen.

COASTAL POLICY

Mr. Frelinghuysen. Thank you, Mr. Chairman.

Coastal protection, pretty important to some of us on this committee, Secretary. It was my understanding that the Administration was going to change its coastal policy based on agreement reached in the Water Resources Development Act of last year, requiring a larger percentage from the local non-federal sponsor. Was that the agreement reached between members of Congress representing coastal areas and the administration?

Dr. Westphal. Well, we proposed a higher cost share than you were willing to accept. We had proposed a 65/35 cost sharing formula; Congress approved a 50/50 cost sharing.

Mr. Frelinghuysen. So you are suggesting there wasn't an agreement, and therefore----

Dr. Westphal. Well, what I said is that I would like us to find ways to accommodate more projects in the budget based on Congress's willingness to adjust the cost share. We have this year 18 projects in the budget, about \$52 million, and one new start, one new coastal restoration project, Assateague Island, in the budget. So we are moving in that direction, but I think that the--well, the other thing that I did was I felt that we really needed to do an assessment nationwide of what is our real need here. We have a significant number of requests, well beyond anything that either we can propose or you can fund for coastal work, and so I was able to get a request for \$300,000 in the fiscal year 2001 for us to do an overall study of the need out there and what we legitimately can put forward and fund.

Mr. Frelinghuysen. But history points out that the cost share used to be 75 percent federal, and 25 percent local. I thought there had been some sort of an agreement, 50/50 cost sharing.

Dr. Westphal. Well again, I say I testified last year--I think it was particularly before the Senate, where I was asked, you know, that the best the Senate could do or the House and the Senate could do together would be 50/50; how would I feel about that? And I felt it was a very positive move forward, and----

Mr. Frelinghuysen. But not positive enough to act on that,

what some considered to be a fairly reasonable agreement?

Dr. Westphal. I will tell you what, when we put this budget together, we had so many constraints for funding that--and it wasn't just shore protection. I mean, we would like to make a bigger dent on our backlog of maintenance. We would like to make a bigger dent on our construction backlog, and we have got great needs, as I said, in our regulatory program. There is a lot of areas where we just have----

Mr. Frelinghuysen. So you wouldn't agree with the notion that somehow you have gone back on an agreement?

Dr. Westphal. No. I would not say we have gone back on it. I think we are looking at it from the standpoint that we believe we can do more in this area, we would like to do more in this area, but we really don't have the funds to do it.

HOPPER DREDGES

Mr. Frelinghuysen. Switching gears here to an issue I bring up every year, dredging, the private hopper dredges. General Ballard, in Section 237, the Water Resources Water Act of 1996 says, ``The Secretary is required to employ private hopper dredges first before using the Corps dredge WHEELER in the Gulf of Mexico, saving the WHEELER for emergencies.'' Have you completed the required report on the success or failure of this program?

General Ballard. We have completed--the draft of the report has been completed. It is currently being coordinated for review by senior staff at the Corps and the office of the Secretary.

Mr. Frelinghuysen. So, we are going to see a final report at one point.

General Ballard. We are prepared to provide a copy to the Committee of this report.

Mr. Frelinghuysen. By?

General Ballard. The end of probably next week.

Mr. Frelinghuysen. That would be great. I appreciate that. But the Corps is also using the dredge McFARLAND, a 180 days a year; is that correct? What is the operating cost for the dredge?

General Ballard. The operating cost for the--the daily costs for operating and maintaining the McFARLAND is about \$65,000.

Mr. Frelinghuysen. So, it is \$65 thousand times 180?

General Ballard. Yes. About \$11.7 million.

Mr. Frelinghuysen. As you know, General, this Committee continues to be concerned over the cost of the refurbishing of the McFARLAND, built in the 1960s. What are the proposed costs on its refurbishment and how much is spent annually on maintaining it?

General Ballard. Well, we, as you know, we launched the McFARLAND in 1967. We expect the total cost for refurbishing to be between \$5-to-\$8 million. We expect to spend the annual costs to operate and maintain and maintenance, we figure about \$7.2 million is needed for maintenance.

Mr. Frelinghuysen. We continue to be concerned about these costs and certainly I think you know our opinion on the use of the private dredges.

Thank you, Mr. Chairman.
Mr. Packard. Thank you.

SAN DIEGO HARBOR

General Madsen, would you kindly take a seat at the table. Just let me ask a couple of local and parochial questions for my own personal benefit. Would you give us an update, and state your name and position for the Committee, but would you give us an update on the deepening of the San Diego Harbor?

General Madsen. Sir, for the record Brigadier General Peter Madsen, and Commander of the South Pacific Division, Corps of Engineers and, sir, I don't have, I will have to find that for the record.

Mr. Packard. For the record will be fine.
[The information follows:]

SAN DIEGO HARBOR DEEPENING, CALIFORNIA

The local sponsor is currently performing an additional economic analysis to determine the requirements and most cost effective channel deepening alternative for future cargo and fleet ships projected to use the port. The feasibility study is scheduled to be completed in August 2000. Upon completing our report, we anticipate the design and construction of the project will proceed under the Continuing Authorities Program.

BOLINAS LAGOON RESTORATION

Mr. Packard. Do you also have a cost-benefit ratio on the Bolinas Lagoon Ecosystem Restoration?

General Madsen. Sir, I don't have that.

Mr. Packard. For the record, please?

General Madsen. Certainly.

[The information follows:]

BOLINAS LAGOON ECOSYSTEM RESTORATION, CALIFORNIA

The cost-benefit ratio on the Bolinas Lagoon Ecosystem Restoration has not been developed. This is an environmental restoration project for which a traditional benefit cost analysis is not prepared. Rather, project justification is derived from restoration of environmental habitat in a cost effective manner.

SANTA BARBARA HARBOR

Mr. Packard. And then why was \$3.8 million reprogrammed from the Santa Barbara Harbor in Santa Barbara, California?

General Madsen. Sir, I will have to provide that for the record.

Mr. Packard. Fine. That is all I have.

[The information follows:]

SANTA BARBARA HARBOR, CALIFORNIA

At the request of our local sponsor, the City of Santa

Barbara, the project has been delayed by one year. Additional time was required to satisfy non-Federal cost sharing provisions. Because of this delay, surplus funds were reprogrammed from the project.

CLOSING

Mr. Packard. Any other questions? Well, again, it has been a productive hearing and we appreciate very much all of you participating, including the Division Commanders. Again, General Ballard, good luck to you on your upcoming retirement and thank you very much, Mr. Secretary, and all of you. We have additional questions we will submit for the record. The hearing is adjourned.

[The information follows:]

I N D E X

CORPS OF ENGINEERS Secretary of the Army

	Page
Department of the Army, Corps of Engineers.....	1-2
Army Civil Works New Initiatives.....	8-9
Complete Statement of the Honorable Dr. Joseph W. Westphal...	5-20
Harbor Services Fund Proposal.....	10
New Investment Program.....	9-10
Testimony of Dr. Westphal.....	2-5
The Civil Works Program Budget Fiscal Year 2001.....	7-8
Highlights of the FY 2001 Continuing Program.....	10-14
Columbia River Basin Fish Mitigation.....	12
Construction, General.....	11
Continuing Authorities Program.....	12
Ecosystem Restoration Program.....	12
General Investigations.....	11
Food Control and Coastal Emergencies (FCCE).....	14
Food Control, Mississippi River and Tributaries (MR&T).....	12-13
Formerly Utilized Sites Remedial Action Program (FUSRAP).....	13
Operation and Maintenance, General.....	12
Regulatory Program.....	13
South Florida Ecosystem Restoration.....	11-12
FY 01 Direct Program.....	15
New Starts for FY 01.....	16
Testimony of LTG Ballard.....	17-20
Complete Statement of Lieutenant General Joe N. Ballard.....	20-37
Corps Historic Role in Service to the Nation.....	24-25
Current Assessments.....	27-28
Current Challenges.....	28-29
Current Civil Program Mission.....	26
Direct Program.....	22
Disaster Response Action.....	34-35

Environmental Management.....	31-33
Flood Protection.....	30-31
Infrastructure Renovation.....	33-34
Meeting Nation's Water and Related Land Resources Management Needs.....	24
National Trends, Introduction.....	27
Navigation.....	29-30
Reducing Corps' Maintenance Backlog.....	23-24
Reimbursed Program.....	22-23
Summary of Civil Works Program Budget, Introduction.....	22
The Civil Works Program Budget Fiscal Year 2001, Introduction	21-22
Detailed Statement of Major General Hans A. Van Winkle.....	38-76
Activities Under the Construction, General Appropriation....	51-54
Activities Under the Flood Control and Coastal Emergencies Appropriation.....	72-73
Activities Under the Formerly Utilized Sites Remedial Action Program (FUSRAP).....	73
Activities Under the General Expenses Appropriation.....	73-75
Activities Under the General Investigations Appropriation....	41-50
Activities Under the Operation and Maintenance, General (O&M) Appropriations.....	54-71
Activities Under the Regulatory Program Appropriation.....	71-72
Activities Under the Revolving Fund.....	75
Aquatic Ecosystem Restoration.....	53
Aquatic Plant Control Program.....	53
Automated Information System Support.....	47
Automation.....	75
Beneficial Uses of Dredged Material.....	52
CALFED.....	44
Chesapeake Bay Program.....	43
Coastal Field Data Collection.....	46
Coastal Inlets Research Program.....	54-55
Collection and Study of Basic Data.....	45
Continuing Authorities.....	51
Cultural Resources (NAGPRA/CURATION).....	55-56
Dam Safety and Seepage/Stability Correction Program.....	51-52
Dredge Wheeler Ready Reserve.....	56
Dredged Material Disposal Facilities Program.....	53
Dredging Data and Lock Performance Monitoring System.....	56-57
Dredging Operations and Environmental Research Program (DOER)	57-58
Dredging Operations Technical Support (DOTS) Program.....	58-59
Earthquake Engineering Research.....	49-50
Earthquake Hazards Reduction Program for Buildings and Lifelines.....	59-60
Employee's Compensation.....	54
Environmental Data Studies.....	46-47
Flood Damage Data Collection.....	47
Flood Plain Management Services.....	45-46
Gulf of Mexico Program.....	43
Harbor Maintenance Fee Data Collection.....	60
Inland Waterways Users Board.....	51
Interagency and International Support.....	44
Interagency Water Resources Development.....	43
Introduction.....	41
Inventory of Dams.....	44
Lake Tahoe.....	44
Management Tools for Operation and Maintenance.....	60-61

Monitoring of Coastal Navigation Projects (MCNP).....	61-62
National Dam Safety Program (NDSP).....	62-63
National Emergency Preparedness Program (NEPP).....	63-64
National Shoreline.....	42
Pacific Northwest Forest Case Study.....	44
Performance Based Budgeting Support Program (PBBSP).....	64-65
Planning Assistance to States.....	42-43
Project Modifications for Improvement of the Environment.....	52
Protecting, Clearing and Straightening Channels.....	65
Recreation Management Support Program (RMSP).....	65-66
Recreation Modernation Program.....	52
Regional Sediment Management Demonstration Program.....	66-67
Reliability Models Program for Major Rehabilitation.....	67
Remaining Items Overview.....	41
Removal of Sunken Vessels.....	67-68
Research and Development.....	47-49
Riverine Ecosystem Restoration and Flood Hazard Mitigation...	53-54
Scientific and Technical Information Centers.....	47
Special Investigations.....	43
Support for Others.....	76
Table of Contents.....	39-40
Total Civil Works Research and Development Funding.....	50
Water Operations Technical Support (WOTS) Program.....	68
Waterborne Commerce Statistics.....	68-69
Wetlands Functional Assessment Methodology.....	69-70
Zebra Mussel Research Program (ZMRP).....	70-71
Remarks of Pride by Mr. Rogers.....	77-78
Remarks of Project Cooperation Agreements by Mr. Rogers.....	78-80
Remarks by Congressman Edwards.....	80-82
Remarks of Dallas Floodway Extension by Congressman Edwards.....	82
Questions for the Record by Congressman Edwards.....	83-98
Colonias Along the Texas-Mexico Border.....	95
Corps Permit Program.....	83-85
Dallas Floodway Extension, Trinity River, TX.....	86
GIWW--Arkansas National Wildlife Refuge, TX.....	90
Graham, TX (Brazos River Basin).....	88
Gulf Intracoastal Waterway, TX.....	91-92
Houston-Galveston Navigation Channels, TX.....	85
Johnson Creek, Upper Trinity Basin, Arlington, TX.....	87
Lower Colorado River Basin, TX.....	86-87
Middle Brazos River Basin, TX.....	89
North Bosque River, TX.....	89
Port of Houston.....	83
Red River Bendway Weirs, TX.....	92-93
Red River Chloride Control (Wichita River Basin), TX.....	87-88
Section 211 Projects.....	93-94
Remarks by Congressman Knollenberg.....	96-98
Conduct of Upper Mississippi Study.....	98-99
Remarks on Allegations of Misconduct.....	104-105
Remarks on Assistant Secretary's Role.....	99-100
Remarks on Columbia River Fish Mitigation.....	113-114
Remarks on Columbia River Fish Mitigation Program.....	118-119
Remarks on Cost Benefit Analysis.....	102-104
Remarks on Cost of Terminating MR&T Actions.....	111
Remarks on Demonstration Erosion Control.....	111-113
Remarks on Lower Snake River Dams.....	115-117
Remarks on Management of the Corps.....	100-102

Remarks on Mississippi River and Tributaries.....	110-111
Remarks on Nationwide Permits.....	107
Remarks on New York and New Jersey Harbor.....	107-110
Remarks on Northwest Salmon Fish Mitigation.....	114-115
Remarks on Results on Fish Population.....	115
Remarks on Rio Salado, AZ.....	106-107
Remarks on Work For School Districts.....	105-106
Remarks on Mitigation Analysis.....	118
Mitigation Analysis.....	119
Total Cost.....	119
Remarks on Administrative Appeals.....	126-128
Remarks on Cost of New Rule.....	123-126
Remarks on Formerly Used Sites Remedial Action Program.....	128-130
Remarks on Nationwide Permit.....	120-123
Correspondence from Mr. Robert M. Andersen.....	131-142
Federal Register, Vol 64, No. 64, Nuclear Regulatory Commission.....	136-140
Natural Resources Defense Council (NRDC).....	131-135
Securities and Exchange Commission.....	140
Federal Register, Vol 64, No. 64, Securities and Exchange Commission.....	140
Remarks on Safety and Radioactivity Levels of FUSRAP Material....	142
Remarks on Extent of Radioactivity.....	142-143
Remarks on Twelve Towns Drain Project.....	143
Remarks on Detroit River Master Plan.....	143-145
Remarks on FUSRAP.....	146
Remarks on Coastal Policy.....	146-147
Remarks on Hopper Dredges.....	147-148
Remarks on San Diego Harbor.....	148
Remarks on San Diego Harbor Deepening, California.....	148
Remarks on Bolinas Lagoon Restoration.....	149
Remarks on Santa Barbara Harbor.....	149
Closing Remarks.....	149
Questions for the Record by the Honorable Ron Packard.....	150-220
Additional Questions on Upper Mississippi River/Illinois Waterway Navigation Study.....	174-176
Assistance to School Districts.....	165
Credit and Reimbursement Agreements.....	170
Flood Control and Coastal Emergencies.....	173
Funding Profile for Recreation Modernization.....	169-170
FY 01 Direct Program Funding.....	171
FY 2001 Budget Request.....	165-168
FY 2001 Budget Request Study Success Rates.....	174
General Investigations.....	173
Growing the Civil Works Program.....	153-157
Harbor Services User Fee.....	171-172
Maintenance Backlog.....	172-173
Nationwide Permit 26 Replacements.....	157-163
Program Execution.....	170
Proposed Sites for Fiscal Year 2001.....	168-169
Recreation Modernization Program.....	168
Regulatory Administrative Appeals Process.....	163-165
Upper Mississippi River/Illinois Waterway Navigation Study..	150-153
Chairman Packard's Question for Major General Hans A. Van Winkle	177-214
American Heritage River Navigators.....	180-184
Arlington Channel, Mobile Harbor, AL.....	212
Coastal Inlets Research.....	208

Construction, General Continued Authorities Directed Projects	184
Construction, General Continuing Authorities Section 1135, 206 and 204 Projects.....	198-204
Craney Island, VA Confined Disposal Facility.....	211
Dam Safety Assurance.....	205
Detroit District.....	212
Devils Lake, North Dakota.....	215-220
Dredge Wheeler.....	210-211
Dredging Operations and Environmental Research (DOER).....	211
Examples of Savings.....	208-210
Flood Mitigation and Riverine Restoration Program.....	207
Grays Harbor, WA.....	209
Instrumental Tools.....	212
Matagorda Ship Channel, TX.....	209
National Recreation Reservation System.....	212-213
Native American Graves Protection and Repatriation Act (NAGPRA).....	212
Operation and Maintenance.....	208
Providence River, RI.....	211
Recreation Modernization Program.....	205-207
Reduced Dredging Costs Resulting From (DOER).....	211-212
Regional Sediment Management Engineering Tools.....	209-210
Regulatory Program.....	213-214
Remaining Items--General Investigations.....	177-180
Section 14, 103, 107, 111, 205 and 208 Projects to be Undertaken in FY 2000 and 2001.....	184-198
Shinnecock Inlet, NY.....	209
Water Operations Technical Support Program.....	213
Wilmington Harbor, NC.....	211
Questions for the Record, Chairman Packard for Colonel Sean M. Wachutka.....	221-244
Budgeted FY 2000 Studies, with Additional Outyear Requirements, Unbudgeted in FY 2001.....	222-223
Butler County, Ohio.....	223
Chicago Sanitary and Ship Canal, Illinois.....	229-230
Construction, General--Ohio River Greenway Public Access, Indiana.....	227
Des Plaines River, Illinois and Wisconsin.....	223-224
General Investigations.....	221
Kanawha River Navigation, West Virginia.....	225
Kentucky Lock Addition, Kentucky.....	230
Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River, West Virginia.....	229
Licking River, Cynthiana, Kentucky.....	224
Locks and Dams 2, 3 and 4, Monongahela River, Pennsylvania...	230
Metropolitan Louisville, Mill Creek Basin, Kentucky.....	225
Metropolitan Louisville, Pond Creek, Kentucky.....	228
Metropolitan Louisville, Southwest, Kentucky.....	224
Mill Creek, Ohio.....	229
Ohio River Main Stem Systems Study, Kentucky, Illinois, Indiana, Pennsylvania, West Virginia.....	223
Olmsted Locks and Dam, Illinois and Kentucky.....	227-228
Onondaga Lake Management Plan, New York.....	225-226
Powell River, Straight, Reeds, Jones and Cox Creek, Virginia.	227
Robert C. Byrd and Dam, West Virginia and Ohio, and Winfield Locks and Dam, West Virginia.....	228
Schedule Slippages of at Least Six Months from Schedules in	

FY 2000 Budget Justification.....	221-222
Turtle Creek Basin, Upper Turtle Creek Environmental Restoration, Pennsylvania.....	226
Tygart Lake (Dam Safety Assurance), West Virginia.....	230
Waukegan Harbor, Illinois.....	224-225
West Columbus, Ohio.....	229
Chairman Packard's Question for BG M. Stephen Rhoades, Commander, North Atlantic Division.....	231-244
Barnegat Bay, New Jersey.....	242
Bronx River Basin, New York.....	240
Budget FY 2000 Studies, with Additional Outyear Requirements, Unbudgeted in FY 2001.....	235-236
Construction, General--Assateague Island, Maryland.....	243
Delaware River Main Channel Deepening, New Jersey, Pennsylvania and Delaware.....	243
Feasibility Cost Sharing Agreement Schedules.....	237-239
Fire Island Inlet to Jones Inlet, New York.....	243-244
Fire Island Inlet to Montauk Point, New York.....	244
General Investigations.....	231
James River, Virginia.....	242-243
Lindenhurst, New York.....	239
Massachusetts and Cape Cod Bays Ecosystem Restoration, Massachusetts.....	239
New York and New Jersey Harbor, New York and New Jersey.....	242
North Shore of Long Island, New York.....	240
Preconstruction Engineering and Design Authorized Projects...	241
Raritan Bay and Sandy Hook, Leonardo, New Jersey.....	239
Schedule Slippages of at Least Six Months from Schedules in FY 2000 Budget Justification.....	231-234
Smith Island Environmental Restoration, Maryland.....	241
Susquehanna River Basin Water Management, Whitney Point Lake, New York.....	241
Upper Rockaway River, New Jersey.....	239-240
Woodbridge and Rahway River Basins, New Jersey.....	240
Wyoming Valley, Pennsylvania.....	244
Questions for BG Carl A. Strock, Commander, Northwestern Division	245
Antelope Creek, Lincoln, Nebraska.....	253-254
Bonneville Dam.....	264
Budgeted FY 2000 Studies, with Additional Outyear Requirements, Unbudgeted in FY 2001.....	249-250
Chatfield, Cherry Creek and Bear Creek.....	256
Chehalis River at Centralia.....	257
Columbia River Fish Mitigation.....	260-262
Construction, General, Missouri River Levee System.....	257-258
Duwamish/Green River Basin.....	253
Elk Creek Lake, Oregon.....	259
Fort Pierre, South Dakota.....	259-260
General Investigations.....	245
Indian Creek, Council Bluffs.....	254
Jackson Hole Restoration Feasibility Study.....	256-257
John Day Drawdown Phase I Study.....	263
Lake Washington Ship Canal Water Conservation Project.....	256
Little Wood River, Gooding, Idaho.....	252
Lower Platte River and Tributaries.....	254
Lower Snake River Fish and Wildlife Compensation Project....	262-263
Missouri and Middle Mississippi Rivers Enhancement Study.....	251
Missouri National Recreational River Project.....	258

Missouri River Fish and Wildlife Mitigation Project.....	260
Mount St. Helens Sediment Control.....	259
Mud Mountain Dam.....	264
Operations and Maintenance, Ice Harbor Lock and Dam Project.....	264-265
Schedule Slippages of at Least Six Months from Schedules in	
FY 2000 Budget Justification.....	245-248
Stillagumish River Basin.....	253
Tillamook Bay and Estuary Ecosystem Restoration Study.....	254-255
Tri-Cities Rivershore Restoration.....	255
Turkey Creek Basin, Kansas and Missouri.....	253
Willamette River Environmental Dredging.....	252
Willamette River Project.....	255
Wood River, Grand Island, Nebraska.....	258-259
Yellowstone River Corridor Study.....	251-252
Chairman Packard's Questions for BG J. Richard Capka, Commander,	
South Atlantic Division.....	266-279
Budgeted FY 2000 Studies, with Additional Outyear	
Requirements, Unbudgeted in FY 2001.....	268
Buford Powerhouse, Georgia.....	278
Canaveral Harbor, Florida.....	273
Cedar Hammock (Wares Creek), Florida.....	275
Construction, General, Rio Nigua At Salinas, Puerto Rico.....	272
Currituck Sound, North Carolina.....	270
Feasibility Cost Sharing Agreement Schedules.....	268
Feasibility Cost Sharing Agreements Scheduled in February or	
March 2000.....	268-269
General Investigations.....	266
Greater Program.....	269
Hillsboro and Okeechobee Aquifer, Florida.....	272-273
Lake Worth Inlet, Florida.....	270-271
Lockwoods Folly River, North Carolina.....	269
Manatee County, Florida.....	275
Manatee Harbor, Florida.....	273-274
Manteo (Shallowbag) Bay, North Carolina.....	271
Martin County, Florida.....	278-279
Miami Harbor, Florida.....	274
Mobile Harbor, Alabama.....	273
Pasacaguola Harbor, Mississippi.....	278
Pinellas County, Florida.....	275
Preconstruction Engineering and Design.....	271
Richard B. Russell Dam and Lake, Georgia and South Carolina..	276
Rio De La Plata, Puerto Rico.....	276
Roanoke River, Upper Basin Headwater, Virginia.....	276
San Juan Harbor, Puerto Rico.....	274
Savannah Harbor Ecosystem Restoration, Georgia.....	269
Savannah River Basin Comprehensive, Georgia.....	270
Schedule Slippages of at Least Six Months from Schedules in	
FY 2000 Budget Justification.....	266-267
South Florida and Everglades Ecosystem Restoration, Florida.....	277-278
Village Creek, Jefferson County, Alabama.....	271
West Palm Beach Canal, Florida.....	276-277
Chairman Packard's Questions for BG Peter T. Madsen, Commander,	
South Pacific Division.....	280-293
Acequias Irrigation System, New Mexico.....	292
Bolinias Lagoon Ecosystem Restoration, California.....	287
Budgeted FY 2000 Studies, with Additional Outyear	
Requirements, Unbudgeted in FY 2001.....	282

Construction, General, Rio Salado, Phoenix and Tempe Reaches, Arizona.....	290
El Paso, Texas.....	292
Execution of Feasibility Cost Sharing Agreements.....	283
Guadalupe River, California.....	291
Laguna De Santa Rosa, California.....	288
Los Angeles Harbor Main Channel Deepening, California.....	285-286
Lower Las Vegas Wash Wetlands, Nevada.....	289
Lower Mission Creek, California.....	287
Lower Sacramento River Levee Reconstruction, California.....	291
Marina Del Rey and Ballona Creek, California.....	285
Merced County Strams, California.....	291
Mid-Valley Area Levee Reconstruction, California.....	291-292
Newport Bay Harbor, California.....	286
Operations and Maintenance, Lake Isabella, California.....	293
Pajaro River at Watsonville, California.....	289-290
Rio De Flag, Arizona.....	286
Rio Grande Basin, CO, NM and TX.....	284
Sacramento and San Joaquin River Basins Comprehensive Study, California.....	285
San Diego Harbor Deepening, California.....	286
San Joaquin River Basin, Cosumnes and Mokelumne Rivers, California.....	288-289
San Joaquin River Basin, Stockton Metropolitan Area, California.....	284
Santa Barbara Harbor, California.....	290-291
Santa Paula Creek, California.....	291-292
Schedule Slippages of at Least Six Months from Schedules in FY 2000 Budget Justification.....	280-281
South Sacramento County Streams, California.....	290
Strong and Chicken Ranch Sloughs, California.....	288
Tres Rios, Arizona.....	286-287
Chairman Packard's Question for BG Edwin J. Arnold, Jr., Commander, Southwestern Division.....	294-301
Arkansas River Navigation Study, Arkansas and Oklahoma.....	296
Brays Bayou, Houston, Texas.....	300-301
Budgeted FY 2000 Studies, with Additional Outyear Requirements, Unbudgeted in FY 2001.....	295
Buffalo Bayou and tributaries, White Oak Bayou, Texas.....	296
Clear Creek, Texas.....	301
Hunting Bayou, Houston, Texas.....	299
Lower Colorado River, Texas.....	296-297
Lower Colorado River, Texas.....	298
McClellan-Kerr Arkansas River Navigation System, Locks & Dams, Arkansas and Oklahoma.....	300
Montgomery Point Lock and Dam, Arkansas.....	300
Neches River Saltwater Barrier, Texas.....	300
North Padre Island, Corpus Christi, Texas.....	297
Raymondville Drain, Texas.....	299-300
Sabine-Neches Waterway, Texas.....	296
Schedule Slippages of at Least Six Months from Schedules in FY 2000 Budget Justification.....	294
Sulphur River Environmental Restoration, Texas.....	297
Sulphur River Environmental Restoration, Texas.....	297
Upper Trinity River Basin, Texas.....	297-298
Walnut and Whitewater River Watersheds, Kansas.....	298
Chairman Packard's Questions for NG Randal R. Castro, Commander,	

Pacific Ocean Division.....	302-308
Akutan Harbor, Alaska.....	303-304
Ala Wai Canal, Hawaii.....	306
Alaska Reconnaissance Studies, Alaska.....	302
Anchorage Harbor Deepening and Brevig Mission Harbor, Alaska.....	302-303
Chandalar River Watershed, Alaska.....	304
Chena River Watershed, Alaska.....	304-305
Coastal Studies of Navigation Improvements, Alaska.....	303
Construction General, Continuing Authorities Program.....	306
Cook Inlet, Alaska.....	308
Delong Mountain Regional Port, Alaska.....	305
Douglas Harbor, Alaska.....	306
General Investigations Budget Request.....	302
Kenai River Watershed, Alaska.....	305
Matanuska River and Naknek River Watershed Studies, Alaska...	305
Port Lions Harbor, Alaska.....	304
Section 14, 103, 107, 205, 206 and 1135.....	307-308
Ship Creek Watershed, Alaska.....	306
Questions for the Record, Congressman Harold Rogers.....	309-325
Budget Request Overview.....	310-312
City of Cumberland, Kentucky.....	324
Corps of Engineers Civil Works Direct Program Funding	
Carryout.....	315-318
Kentucky Fifth District.....	312-314
Levisa and Tug Fork of the Big Sandy River and Upper	
Cumberland River, WV, VA & KY.....	318-320
Levisa and Tug Fork of the Big Sandy River and Upper	
Cumberland River, WV, VA & KY.....	324-325
New Construction.....	309-310
Program Execution.....	314
Projects and Separable Elements OMB Excluded from the FY 2001	
Budget.....	311-312
Salyersville, Kentucky.....	323
Status of Kentucky Section 202 Elements That Are Under	
Construction.....	320-323
Wolf Creek Dam and Lake Cumberland Kentucky--Trash Rack.....	324
Questions for the Record, Honorable Joe Knollenberg.....	326-333
Corps Reports in the Media.....	326
Detroit River, Michigan, Activities.....	328-329
Formerly Utilized Sites Remedial Action Program (FUSRAP)....	329-331
Nationwide Permits (NWP and NWP 26).....	331-332
Reorganization--Disposition of Great Lakes Center.....	326-327
Twelve Towns Drain, Michigan.....	327-328
UF Conversion--Paducah, Kentucky.....	332-333
Questions for the Record, Honorable Rodney P. Frelinghuysen....	334-354
Arthur Kill Channel, Howland Hook, Marine Terminal, NY & NJ..	345
Coastal Protection.....	339
Coastal Protection.....	341
Delaware River Main Channel Deepening, NJ, PA & DE.....	352-355
Joseph G. Minish Waterfront Park and Historic Area, NJ.....	348-349
Kill Van Kull and Newark Bay Channels, NY & NJ.....	341-342
Lower Passaic River, New Jersey, Environmental Remediation...	339
Nationwide Permit 26.....	334-335
New York & New Jersey Harbor--HARS.....	335-337
New York Harbor and Adjacent Channels, NY and NJ Port Jersey,	
NJ.....	346
New York-New Jersey Harbor Dredging.....	342-344

Overseas Mission.....	337
Passaic River Mainstem, NJ.....	351-352
Passaic River Preservation of Natural Storage, NJ.....	344-345
Policy Impacted Coastal Projects.....	340-341
Raritan River Basin, Green Brook Sub-Basin, NJ.....	346-348
Upper Passaic River and Tributaries, NJ.....	349-350
Upper Rockaway, NJ.....	350-351
Wheeler and McFarland Dredge.....	338
Questions for the Record, Honorable Sonny Callahan.....	355-356
Questions for the Record, Honorable Tom Lathan.....	357-361
Dension, Iowa.....	360-361
Drainage Wells--Iowa Permit Action.....	360
Missouri River Master Water Control Manual Update.....	361
Operation & Maintenance of Navigation Projects.....	359-360
Perry Creek, Iowa.....	361
Upper Mississippi and Illinois River Navigation Study, Illinois, Iowa, Minnesota, Missouri.....	357-359
Questions for the Record, Submitted by Mr. Visclosky.....	362-369
Burns Harbor, Indiana.....	364
Cady Marsh Ditch, Indiana.....	362
Calumet Region Environmental Infrastructure, Indiana.....	365
Delegation of Approval of PCA's.....	367-368
East Chicago Native Grass Buffer, Indiana.....	363
Folsom Dam Modification, California.....	368
Grand Calumet River, Indiana Remedial Action Program.....	366
Great Lakes Navigation Study.....	366-367
Hammond Shoreline, Indiana.....	363
Indiana Harbor Confined Disposal Facility (CDF), Indiana.....	365
Indiana Harbor Environmental Dredging, Indiana.....	362
Indiana Shoreline Erosion, Indiana.....	365-366
Indianapolis Central Waterfront, Indiana.....	364
John Glenn Great Lakes Strategic Plan.....	366
Little Calumet River, Indiana.....	365
Long Lake Environmental Restoration, Indiana.....	363
Magpie Creek, California.....	369
Midwestern States.....	367
Ohio River Greenway Public Access, Indiana.....	364
South Sacramento Streams, California.....	369
Whiting Shoreline, Indiana.....	362
Wolf Lake, Indiana.....	362-363
Questions for the Record, Congressman Edwards.....	370-383
Colonias Along the Texas-Mexico Border.....	382
Corps Permit Program.....	370-372
Dallas Floodway Extension, Trinity River, TX.....	373
GIWW--Arkansas National Wildlife Refuge, TX.....	377
Graham, TX (Brazos River Basin).....	375-376
Gulf Intracoastal Waterway, TX.....	378-379
Houston-Galveston Navigation Channels, TX.....	372
Johnson Creek, Upper Trinity Basin, Arlington, TX.....	374
Lower Colorado River Basin, TX.....	373-374
Middle Brazos River Basin, TX.....	376
North Bosque River, TX.....	376-377
Port of Houston.....	370
Red River Bendway Weirs, TX.....	379-380
Red River Chloride Control (Wichita River Basin), TX.....	374-375
Section 211 Projects.....	380-381
Questions Submitted for the Record by Congressman Ed Pastor.....	383

Nogales Wash, Arizona.....	383
Rio Salado, Phoenix and Tempe Reaches, Arizona.....	383
Tucson Drainage Area, Arizona.....	383
Honorable Michael P. Forbes, Questions for BG M. Stephen Rhoades, Commander, North Atlantic.....	384-385
Atlantic Coast of New York, New York.....	385
Fire Island Inlet to Mantauck, New York.....	384-385
Lake Mantauck Harbor, New York.....	385
Mantauck Point, New York.....	384

ENERGY AND WATER DEVELOPMENT

APPROPRIATIONS FOR 2001

HEARINGS

BEFORE A

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SECOND SESSION

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